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The Mississippi Judiciary Commission Revisited: Judicial Administration: An Idea Whose Time Has Come

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THE MISSISSIPPI JUDICIARY COMMISSION REVISITED: JUDICIAL ADMINISTRATION: AN IDEA WHOSE TIME HAS COME?

*Mary Libby Payne**

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How familiar it sounded—much like the Mississippi Judiciary Commission's report to the 1970 Legislature. Yet it was the Mississippi Bar's recommended legislative program for the 1993 session. I sat in the meeting of the Harrison County Bar Association listening to Sandy Steckler outline the recommendations: state office of Administrator of the Courts, salary increase for trial and appellate judges, support staff for trial judges, and an intermediate appellate court.[1] Though an intermediate appellate court was of recent vintage, the main thrust of the 1970 recommendations involved a statewide court administrator. Now, twenty-three years later, it was still first on the list.

I was reminded of former New Jersey Chief Justice Arthur Vanderbilt's statement: "Judicial reform is no sport for the short-winded."[2] How had we in Mississippi gotten here? Who were the pioneers, the visionaries in whose footprints the present bar leaders were walking? The purpose of this Article, which has been in progress for several years, is to chronicle the history of judicial reform in Mississippi and to preserve for posterity the names of the instigators of and contributors to those reforms.

I. HISTORY

A. Citizens' Conference on Mississippi State Courts, September 1967

On September 7-9, 1967, the American Judicature Society, the Conference of Mississippi State Judges, the Mississippi State Bar, and the Mississippi State Junior Bar jointly sponsored a Citizens' Conference on Mississippi State Courts.[3] One of the recommendations to come from that group of nonlawyers was that a court study be done as the basis for recommendations for improvement in the justice system in the state.

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1. Sanford R. Steckler, Remarks at the Meeting of the Harrison County Bar Association in Biloxi, Miss. (Jan. 14, 1993) (discussing information from Grady F. Tollison, Jr., President's Message (Jan. 1993), *in* LEGISLATIVE BULLETIN (Jan. 1993)).

2. Arthur Vanderbilt, *Minimum Standard of Judicial Administration* xix (The Law Center of New York University ed., 1949), *quoted in* MEMORABLE LEGAL QUOTATIONS (E. Gerhard ed., 1969).

3. *State Courts Talked to Blue Ribbon Group*, CLARION-LEDGER (Jackson, Miss.), Sept. 8, 1967, at A16.

B. 1968 Law Creating the Judiciary Commission

The 1968 Legislature established the Mississippi Judiciary Commission,[4] a temporary study group charged with the following tasks:

> SECTION 3. The commission shall make a complete survey of the judicial system of Mississippi and shall obtain statistical information with reference to case loads of the various courts in Mississippi; conduct research relating to improvement of the judicial system in the State of Mississippi; and make a comprehensive study of the judicial system of the State for the purpose of the improvement thereof, which shall include, but not be limited to:
>
> (a) Problems incident to the administration, structure and personnel of the courts;
>
> (b) Alleviation of calendar congestion and delays in bringing cases to trial;
>
> (c) Enlargement and location of rule-making power;
>
> (d) Improvement in the methods of selection of the judiciary;
>
> (e) Evaluation of the provisions of law pertaining to jury service, selection and qualification and exemptions therefrom;
>
> (f) The existing boundaries of chancery and circuit districts;
>
> (g) Changes in tenure of office and compensation of Judges of the Supreme Court, Chancery judges, circuit judges, county judges and district attorneys;
>
> (h) Case loads of district attorneys;
>
> (i) Studies and recommendations as to the establishment of an adequate system of public defenders for the State of Mississippi;
>
> (j) Improvements in the systems of county courts and justices of the peace;
>
> (k) Such other changes or revisions as will improve the efficiency and the quality of the judicial system, its personnel and the administration of civil and criminal justice in the State of Mississippi.[5]

C. Composition, Work, and Report of the Judiciary Commission

The Commission had ten members selected from various constituent groups:

> Chief Justice W. N. Ethridge, Jr. of Oxford, elected by the Supreme Court Judges, who by statute became the chairman but without a vote;
>
> Judge Darwin M. Maples of Lucedale, elected by the Circuit Court Judges;
>
> Judge Michael L. Carr, Jr. of Brookhaven, elected by the Chancery Court Judges, and elected by the Commission to serve as vice-chairman;
>
> Senators W. B. Alexander, Jr. of Cleveland and Jesse L. Yancy, Jr. of Bruce, appointed by the President of the Senate, representing each of the Judiciary Committees of the Senate; Representatives Horace L. Merideth, Jr. of Greenville and Ney M. Gore, Jr. of Marks, appointed by the Speaker of the House of Representatives, representing each of the Judiciary Committees of the House;
>
> District Attorney James Finch of Hattiesburg, appointed by the Governor from the district attorneys at large;

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4. Act of July 31, 1968, ch. 312, 1968 Miss. Laws 427.

5. *Id.*

W. B. Greene of Laurel and W. P. Veazey of Coldwater, laymen appointed by the Governor from the state at large.[6]

Organized in the fall of 1968, the group hired an executive director who began work in December of that year.[7] Since no statistical studies had been done on the courts in this state, except for annual workload reports of the supreme court, survey forms had to be created, tested, and validated before the field work could be done.[8] D. M. Anderson, an attorney from Newton; Sam Hooper Gammill, an attorney from Hattiesburg; and Sander P. Margolis, a 1969 University of Mississippi Law School graduate worked with the Executive Secretary to perform the statewide trial court statistical survey.[9] The Governor's Highway Safety Program staff compiled the justice and municipal court statistics.[10]

Public hearings were scheduled and broad participation was sought from prosecutors, judges, justices of the peace, law enforcement officers, court reporters, social workers, state employees, practicing attorneys, and laymen.[11] Hearings were held on these subjects: defense for the indigent, judicial compensation, youth court, district attorneys, justice of the peace court, juries, and court reporters.[12]

The Commission was divided into sub-committees studying the following subjects: "retirement, selection, discipline and removal of judges, code revision, rule-making powers, and judicial administration."[13] In December 1969, the Commission reported to the 1970 Legislature, recommending many changes ranging from the recognition of the inherent power of the supreme court to make the Rules of Practice in the Courts to a requirement of a uniform arrest ticket in misdemeanor cases in justice of the peace court. A summary of those recommendations follows:

A. *For general administration of justice*:
   1. Create the office of Administrator of the Courts;
   2. Authorize temporary assignment of judges to serve outside their districts to equalize work loads in trial courts;
   3. Allow judges to extend one county's term to overlap with another to use assigned temporary judges;
   4. Authorize assignment of circuit or chancery court judges to serve as Supreme Court Commissioners;
   5. Create a Judicial Qualifications Commission with authority to discipline, suspend, retire, or remove unfit judges;

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6. MISSISSIPPI JUDICIARY COMMISSION, REPORT TO THE LEGISLATURE OF 1970, at 2 (1970) [hereinafter MISS. JUDICIARY COMM'N].

7. The author of this Article was executive director.

8. MISS. JUDICIARY COMM'N, *supra* note 6, at 1-2.

9. MISS. JUDICIARY COMM'N, *supra* note 6, at acknowledgements page.

10. MISS. JUDICIARY COMM'N, *supra* note 6, at acknowledgements page.

11. MISS. JUDICIARY COMM'N, *supra* note 6, at 3.

12. MISS. JUDICIARY COMM'N, *supra* note 6, at 3.

13. MISS. JUDICIARY COMM'N, *supra* note 6, at 3.

6. Continue the Mississippi Judiciary Commission as a statistical gathering and study group;
7. Revest the rule-making power in the courts with initiation by an advisory committee with notice to the local bar and with veto power in the legislature;
8. Provide adequate compensation for the judiciary as well as group hospitalization insurance, travel reimbursement and mileage as other state employees;
9. Provide a realistic retirement for judges with them being available for temporary assignment to help relieve heavy work loads.

B. *For improvement of the administration of criminal justice*:
1. Make the office of district attorney full time with a greatly increased salary and with mandatory contribution to office expense by the boards of supervisors in proportion to the weeks of term allotted to that county in the district;
2. Provide travel expense reimbursement and mileage and a group hospitalization insurance contribution like other state employees for district attorneys and assistants;
3. Provide for a full time assistant to the district attorney for every 150,000 population in his district at a salary sufficient to induce qualified lawyers to become assistants;
4. Limit association and make cooperation by the county attorney mandatory by adding a penalty for violation of Section 3916, Mississippi Code of 1942;
5. Amend the Constitution of 1890 to allow the district attorney to proceed in vacation on information and allow the defendant to waive indictment and plead guilty if represented by counsel;
6. Create the office of State Public Defender to handle all appeals of indigents and post-conviction remedies;
7. Provide for the annual appointment by circuit judges of a panel of lawyers in their districts to handle indigent criminal defense within their districts with adequate hourly pay to represent indigents in all felonies, in misdemeanors where imprisonment might result, and in all youth cases.

C. *For redistricting*:
1. Relieve the most critical areas in chancery and circuit courts by the addition of one circuit court judge, redistricting in Chancery Court Districts 3, 14, 10, 4, and 15, and the addition of one chancery court judge;
2. Require the Mississippi Judiciary Commission to get statistics for additional years so that projections can be made on which to base a long-range plan for statewide districting.

D. *For personnel*:
   1. Provide a raise for court reporters in circuit, chancery, and county courts; provide mileage like State employees paid by the county without discretion;
   2. Assign court reporters temporarily to go with judges who are on temporary assignment;
   3. Require circuit and chancery clerks to attend a clerks' seminar on keeping dockets and minute books, preparing records on appeals, and performing other functions attendant to the office;
   4. Provide a sentencing seminar for circuit and county court judges and increase in probation staff.

E. *For improvement of youth court*:
   1. Place youth court as a division of chancery court;
   2. Authorize the chancellor to appoint the county court judge as special chancellor in youth court cases where there is no conflict between custody and youth court determinations;
   3. Amend the Youth Court Act to grant concurrent jurisdiction in areas where youth court jurisdiction was excluded by the 1966 amendments;
   4. Amend the Youth Court Act to lower the age limit from 18 to 16;
   5. Include school teachers in the battered child requirements and presumptions;
   6. Expand training school facilities;
   7. Encourage community cooperation for detention centers;
   8. Create a permanent State diagnostic center for youths;
   9. Establish a separate Probation and Parole Board for juvenile offenders;
   10. Require one trained counselor for each youth court judge with additional counselors as needed.

F. *For upgrading justice of the peace court*:
   1. Amend Section 171 of the Constitution of 1890 as to justices of the peace to delete the requirements of one per supervisor's district, a two year residency within the district prior to seeking office, the jurisdictional amount, and any reference to constables;
   2. Provide one justice of the peace per 15,000 population, with no more than five nor less than two in a county, with districts having more than one post, and with the board of supervisors designating the boundaries of each justice of the peace district;
   3. Set a penalty for failure to use a uniform receipt under Section 1841.5, Mississippi Code of 1942;
   4. Audit each justice of the peace office annually with copies furnished to the board of supervisors, district attorney, and circuit judge within twelve months after the end of period audited;
   5. Require a high school diploma, or its equivalent, for 1971 with a grandfather clause to apply to all justices of the peace seeking reelection in 1971;

6. Require a junior college degree, or its equivalent for 1975 with a grandfather clause to apply to all justices of the peace seeking reelection in 1975;
7. Require forty hours of instruction under the supervision and direction of the Attorney General of the State after election and before taking office, as well as twenty-four hours of instruction annually during the term;
8. Increase the official bond from $2,000.00 to $5,000.00 with the term beginning in 1972;
9. Take justices of the peace off the fee system and place them on a salary to be paid by the county with all fines, fees and costs to be paid into the county treasury;
10. Require the county to provide adequate facilities for holding court in each justice of the peace district;
11. Amend Section 1806, Mississippi Code of 1942, so that the defendant in a civil suit can be sued only in the district of his residence and not in the district where the debt was incurred to eliminate the practice of "shopping" for a judge;
12. Abolish the office of constable as the sheriff's office is to become a career law enforcement office with sufficient salaried deputies to perform the functions of that office.
13. Require court costs in civil suits to be paid in advance, otherwise any judgment in such suit is void (except where a pauper's oath is filed);
14. Establish a special court of eminent domain with the circuit judge and jury in counties not having a county court, rather than with a justice of the peace and jury.

G. *For appellate work*:
Make appeals to circuit or chancery courts from State administrative agencies final unless a writ of certiorari is granted by the Supreme Court.

H. *For revising the Code*:
Perform a comprehensive revision of the Code for adoption by the legislature with a professional contractor to point out discrepancies and a local group to make decisions of reconciling them subject to amendment or deletion by the legislature.

I. *For further study*:
1. Continue research in regard to selection of the judiciary;
2. Continue research in regard to jury selecting and impanelling since recommendations have been deferred as many counties are in the midst of jury contest suits in federal court;

3. Determine what would be a realistic minimum amount in controversy for appeals to the Supreme Court;
4. Devise a safe and workable method for having the grand jury sit in vacation.[14]

During the session of 1970, other than legislation which dealt with salaries,[15] expenses,[16] and new judicial positions,[17] no recommended piece of legislation was passed except one bill which "allowed for a term in one county in a court district to be extended to overlap with a term of another county in that district if the scheduled term is not pretermitted."[18] Unfortunately, that bill was a companion to the bill creating the Office of Court Administrator that would have allowed temporary assignment of chancery or circuit court judges by the Office of Court Administrator based on data collected by that office.[19] Therefore, the enacted bill is limited in its use to such temporary assignments.[20] Specifically, the bill to create the Office of Court Administrator (authorizing temporary assignments) and to extend the Judiciary Commission was amended and passed by the House of Representatives[21]

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14. MISS. JUDICIARY COMM'N, *supra* note 6, at 4-8.

15. Act of Apr. 3, 1970, ch. 402, 1970 Miss. Laws 526 (judges) (originally codified at MISS. CODE ANN. of 1942 §§ 1608, 4175.5 (Supp. 1972)) (current version at MISS. CODE ANN. § 43-23-39 (Supp. 1993), § 25-3-35 (Supp. 1993)); Act of July 1, 1970, ch. 395, 1970 Miss. Laws 498 (court reporters) (originally codified at MISS. CODE ANN. of 1942 §§ 1633, 1611, 1611.5 (Supp. 1972)) (current version at MISS. CODE ANN. §§ 9-13-19, -61, -63 (1991 & Supp. 1993)).

16. Act of July 1, 1970, ch. 334, 1970 Miss. Laws 406 (mileage) (originally codified at MISS. CODE ANN. § 1653.9 (Supp. 1972)) (current version at MISS. CODE ANN. § 25-3-43 (Supp. 1993)); Act of Apr. 6, 1970, ch. 448, 1970 Miss. Laws 641 (group insurance) (originally codified at MISS. CODE ANN. of 1942 § 5649 (Supp. 1972)) (current version at MISS. CODE ANN. § 25-15-101 (1991)).

17. Act of Mar. 30, 1970, ch. 325, 1970 Miss. Laws 397 (originally codified at MISS. CODE ANN. of 1942 § 1218.1 (Supp. 1972)) (current version at MISS. CODE ANN. § 9-5-13 (1991)) (3d Chancery District additional judge); Act of Mar. 30, 1970, ch. 326, 1970 Miss. Laws 399 (originally codified at MISS. CODE ANN. of 1942 § 1226.7-01 (Supp. 1972)) (current version at MISS. CODE ANN. § 9-5-45 (1991)) (14th Chancery District additional judge); Act of Mar. 30, 1970, ch. 333, 1970 Miss. Laws 405 (originally codified at MISS. CODE ANN. of 1942 § 1411.8 (Supp. 1972)) (current version at MISS. CODE ANN. § 9-7-51 (1991)) (19th Circuit District additional judge); Act of Apr. 6, 1970, ch. 335, 1970 Miss. Laws 407 (originally codified at MISS. CODE ANN. of 1942 § 1604 (Supp. 1972)) (current version at MISS. CODE ANN. §§ 9-9-1, -3, -5, -11, -19, -21 (1991 & Supp. 1993)) (county courts authorized in additional counties); Act of Mar. 7, 1970, ch. 337, 1970 Miss. Laws 409 (originally codified at MISS. CODE ANN. of 1942 § 1604.7 (Supp. 1972)) (current version at MISS. CODE ANN. § 9-9-17 (1991) (Jackson County Court additional judge); Act of Feb. 3, 1970, ch. 349, 1970 Miss. Laws 421 (originally codified at MISS. CODE ANN. of 1942 § 3920.7 (Supp. 1972)) (current version at MISS. CODE ANN. § 25-31-3 (1991)) (First Circuit District, Assistant D.A.).

18. Act of Apr. 3, 1970, ch. 327, 1970 Miss. Laws 400 (originally codified at MISS. CODE ANN. of 1942 § 1647.5 (Supp. 1972)) (current version at MISS. CODE ANN. § 9-1-5 (1991)). This Act was to negate the rule in Murphy v. State, 178 So. 2d 692 (Miss. 1965), that had reversed a conviction of a defendant tried when the judge had extended the regular term of court to include the date of a statutory term in another county in the same circuit court district.

19. H.R. 408, Reg. Sess., 1970 Miss. House J. 1185 (died on the House Calendar). An identical bill, S. 1765, Reg. Sess., 1970 Miss. Senate J. 1297, died in the Senate Judiciary En Banc Committee.

20. MISS. CODE ANN. § 9-1-5 (1991).

21. H.R. 427, Reg. Sess., 1970 Miss. House J. 271 (died on the House floor, but on motion to reconsider was called up again, *id.* at 329) (amended and affirmatively voted on February 19, 1970, *id.* at 330). *See also Senate Votes Rail Tax for Safety Inspectors*, CLARION-LEDGER (Jackson, Miss.), Feb. 17, 1970, at A1, A12 (stating that the House rejected, by a vote of 37 to 62, a proposal to give permanent status to the Commission which had been created two years earlier to study the legal system); *Senate Vote Reins on Auto Makers*, CLARION-LEDGER (Jackson, Miss.), Feb. 20, 1970, at A1, A20 (reporting that the House had extended the life of the Mississippi Judiciary Commission on Wednesday, February 18, to allow the advisory agency to complete its studies and recommendations on revamping the state judicial system).

but died in the Senate Committee.[22] Since the companion bill was inoperable without this one, the one bill that passed was a hollow victory.

One of the most unpopular recommendations made by the Judiciary Commission was that the Office of Constable be eliminated[23] since the Sheriff's Succession Act[24] would allow for an adequate number of well-trained deputies for the sheriff in each county.[25] That recommendation incurred the wrath of over 800 justices of the peace and constables.[26] They were not the only adversaries of the Commission's recommendations, but they were certainly "worthy adversaries."[27]

Recommendations that the Commission felt would be easy to pass, but failed, were those that would (1) include school teachers in the Battered Child Reporting and Immunity for Reporting Law;[28] (2) require that justice of the peace cases be brought in the county where the defendant resides, thereby taking away the choice of the plaintiff to bring the case in the county where the debt was incurred;[29] (3) require that civil costs in justice of the peace court be paid in advance to overcome the concept of "volume business" in which justices of the peace, constables, and deputy sheriffs were engaged;[30] and (4) provide a penalty for failure of a justice of

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22. The bill was then sent to the Senate on February 23, 1970, referred to Judiciary En Banc Committee, 1970 Miss. Senate J. 389, and never came out of the committee. An identical bill, S. 1763, Reg. Sess., also died in the Senate Judiciary En Banc Committee. 1970 Miss. Senate J. 1297.

23. H. Con. Res. 37, Reg. Sess., 1970 Miss. House J. 178. *See also Commission Urges Major J.P. Changes, Proposes Constable's Office Be Abolished*, JACKSON DAILY NEWS, Nov. 6, 1969, at A1, A20; *Panel Would Scrap Fee System for JPs*, CLARION-LEDGER (Jackson, Miss.), Nov. 7, 1969, at A1, A16.

24. Act of Aug. 8, 1968, ch. 369, §§ 3, 5, 8, 1968 Miss. Laws 566, 567-71 (originally codified at MISS. CODE ANN. of 1942 §§ 4235, 4235.3, 4235.5 (Supp. 1972)) (current version at MISS. CODE ANN. §§ 19-25-13 to -23 (1972 & Supp. 1993)) (effective on the first Monday in January 1972).

25. *Id.*

26. *See J.P. Reform Proposal Falls Short in House*, CLARION-LEDGER (Jackson, Miss.), Feb. 18, 1970, at A1, A12. The proposed amendments, placing justices of the peace under greater legislative control, failed to pass the House Tuesday, February 17, by a vote of 62 yeas to 48 nays, a dozen votes short of the needed 2/3 majority. *Id.* One of the amendments would have abolished the post of County Constable from the Constitution. H. Con. Res. 37, Reg. Sess., 1970 Miss. House J. 285 (for ultimate death of reconsideration, see 1970 Miss. House J. 785).

27. *J.P. Reform Proposal Falls Short in House*, CLARION-LEDGER (Jackson, Miss.), Feb. 18, 1970, at A1, A12.

28. H.R. 424, Reg. Sess. (1970) (passed the House without a dissenting vote, 1970 Miss. House J. 356, but died in the Senate Committee, 1970 Miss. Senate J. 458, the last entry showing referral to Committee). S. 1768, Reg. Sess. (1970) (identical to H.R. 424) (passed the Senate without a dissenting vote, 1970 Miss. Senate J. 377, went to the House, and was reported out of the House Committee as "Title Sufficient Do Pass," 1970 Miss. House J. 831, but died on the House Calendar). Both of these bills were amended in their house of origination to include teachers in "private as well as public" schools. *See* 1970 Miss. House J. 356; 1970 Miss. Senate J. 377. It might be of interest to note that on November 7, 1969, the Fifth Circuit Court of Appeals had put an end to all the foot-dragging done by public school districts and required the implementation of effective desegregation plans by December 31, 1969. *See* United States v. Hinds County Sch. Bd., 423 F.2d 1264 (5th Cir. 1969). Integration of the schools and the attendant "white flight" from public schools was uppermost in the minds of many legislators during the 1970 session, regardless of the context. *Mixing Plans Ordered Implemented by Dec. 31*, CLARION-LEDGER (Jackson, Miss.), Nov. 7, 1969, at A1.

29. H.R. 412, Reg. Sess. (1970) (passed the House, 1970 Miss. House J. 256, 266, but failed to pass in the Senate, 1970 Miss. Senate J. 853, was held on a motion to reconsider the vote whereby the bill had failed to pass, *id.* at 854, and the motion to reconsider was tabled, *id.* at 870, thereby giving the bill its final death knell).

30. The Committee substitute for H.R. 416, Reg. Sess. (1970), passed the House. 1970 Miss. House J. 257, 271. The bill got on the Senate calendar, but it was tabled on the floor of the Senate and thereafter died. 1970 Miss. Senate J. 871.

the peace to abide by the law which required use of uniform receipts.[31] Not one of these recommendations was passed in that session.

After such a sound defeat, the appropriation for the continuation of the Judiciary Commission[32] was included in the budget of the University of Mississippi's Center for Continuing Education.[33] With the availability of Law Enforcement Assistance Administration[34] funds to match this additional funding, the University of Mississippi established the Mississippi Judicial College, the Mississippi Prosecutor's Association, and the Mississippi Law Student Intern Program.[35]

D. Mississippi Judicial College

The Mississippi Judicial College, established in September 1970, coordinated funding for the out-of-state education of court personnel as well as the development of extensive in-state programs.[36] During the first five years of that program, over 2600 registrants participated in the Judicial College's program.[37] The Prosecutor's Association was established in 1973 at the University of Mississippi Law School at the request of the Mississippi Association of Prosecuting Attorneys.[38] Its purpose was to provide training programs for all prosecutors in the state.[39] The Law Student Intern Program established in 1971[40] had two primary purposes: (1) the creation of a pool of qualified prosecutors to upgrade criminal justice in the state and (2) the alleviation of the increased workload placed on prosecutors,

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31. H.R. 415, Reg. Sess. (1970) (passed the House, 1970 Miss. House J. 257, 270, but was tabled in the Senate, 1970 Miss. Senate J. 871).

32. H.R. 996, Reg. Sess. (1970), making an appropriation for the operation of the Judiciary Commission, was killed in the House Appropriations Committee, but brought out on a Minority Report signed by Representatives Stone D. Barefield, Frank Carlton, Dana C. Moore, Jr., and C. H. Kennedy. 1970 Miss. House J. 601-02. It died on the House calendar. *Id.*

33. MISSISSIPPI CRIMINAL JUSTICE DIVISION & RESOURCE PLANNING CORPORATION, 3 COURTS STRATEGY, A MASTER PLAN FOR COURTS IN MISSISSIPPI 1-34 (1976) [hereinafter 3 COURTS STRATEGY]. In 1974-75 funding began to go directly to the Law Center at the University of Mississippi. *Id.*

34. Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197 (codified at 42 U.S.C. § 3701).

35. Interview with James M. Pierce, Director of Criminal Justice Planning Division, Governor's Office of Federal State Programs, in Jackson, Miss. (July 17, 1985) [hereinafter Pierce]. It should be noted here that LEAA funding which had been the mainstay for the Judicial College became nonexistent in the late 1970s. In 1981, the legislature created the Courts Education and Training Fund by assessing $1.00 on each case filed in the state. Act of Mar. 20, 1981, ch. 368, §§ 1-5, 1981 Miss. Laws 879, 879-80 (originally codified at MISS. CODE ANN. §§ 37-26-1, -9 (Supp. 1993)). The assessment was increased to $2.00 in 1985. Act of Mar. 21, 1985, ch. 338, § 2, 1985 Miss. Laws 154, 154-58 (originally codified at MISS. CODE ANN. § 37-26-3 (Supp. 1985)) (amending § 37-26-3). Later, the funds were split 75% to the Judicial College and 25% to the Attorney General for prosecutor's training. Act of Mar. 28, 1989, ch. 471, §§ 1-3, 1989 Miss. Laws 274 (originally codified as MISS. CODE ANN. §§ 37-26-1, -7, -9 (Supp. 1989)). An additional 50 cent fee was added in 1991 to fund the State Court Constituents Fund. MISS. CODE ANN. § 37-26-9 (Supp. 1991).

36. 3 COURTS STRATEGY, *supra* note 33, at 1-36, 40.

37. 3 COURTS STRATEGY, *supra* note 33, at 1-36.

38. MISSISSIPPI CRIMINAL JUSTICE DIVISION & RESOURCE PLANNING CORPORATION, 4 COURTS STRATEGY, A MASTER PLAN FOR COURTS IN MISSISSIPPI (1976) [hereinafter 4 COURTS STRATEGY].

39. *Id.*

40. Legal Intern Limited Practice Act of 1971, ch. 466, 1971 Miss. Laws 540 (originally codified at MISS. CODE ANN. of 1942 §§ 8684-01 to -06 (Supp. 1972)) (current version at MISS. CODE ANN. §§ 73-3-201 to -211 (1989)).

defenders, and youth courts by the impact of decisions more clearly defining the rights of the accused.[41]

Although these programs were innovative and significant to the groups they affected, they were developed within the academic environment and were dependent on volunteers for participation. The programs lacked statewide grassroots involvement as well as official recognition which would be evidenced by legislative funding.[42] Because the funding came largely from the federal Law Enforcement Assistance Administration, only criminal justice matters could be addressed.[43]

Supreme court statistics for the period showed that criminal appeals constituted only about one fourth of the total workload.[44] Therefore, the bulk of the work of the administration of justice, civil and administrative matters, received a disproportionately small amount of attention.[45] This fact is reinforced by the chancery judges' reaction to the type of education and training provided by the Judicial College which, due to funding, had to be related somehow to criminal justice.[46]

E. Mississippi Citizens' Conference on the Administration of Justice, December 1973

Meanwhile, in December 1973, the American Judicature Society, in connection with the Mississippi State Bar, sponsored the Mississippi Citizen's Conference on the Administration of Justice.[47]

F. Ad Hoc Committee and Non-Profit Corporation for the Administration of Justice in Mississippi

Out of that conference there came an ad hoc citizens' committee of influential lay persons who later formed a non-profit corporation to continue to educate the public about the need to improve the administration of justice in Mississippi. That

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41. 4 COURTS STRATEGY, *supra* note 38, at 13-14; *In re* Gault, 387 U.S. 1 (1967); Miranda v. Arizona, 384 U.S. 436 (1966); Gideon v. Wainwright, 372 U.S. 335 (1963).

42. The block grant for October 1975 through June 1976 provided by LEAA was $231,323 (90%) with state and local matching funds of $25,703. 3 COURTS STRATEGY, *supra* note 33, at 1-36. Because some of the funds could be furnished by "in kind" services, the state's commitment was meager. 3 COURTS STRATEGY, *supra* note 33, at 1-36.

43. *See* 3 COURTS STRATEGY, *supra* note 33, at 1-36.

44. MISS. JUDICIARY COMM'N, *supra* note 6, at 42; 3 COURTS STRATEGY, *supra* note 33, at 2-15.

45. 3 COURTS STRATEGY, *supra* note 33, at 1-46.

46. *See* 3 COURTS STRATEGY, *supra* note 33, at 1-46.

Perhaps even more dramatic was the difference between the judges with respect to their perceived *usefulness* of the College's programs. While eighty-four percent of the responding circuit judges and seventy-eight percent of the responding county judges rated the usefulness of the College's programs as "high," *only fifty-four percent of the responding chancery judges concurred. A significantly higher percentage of chancery judges rate the College's usefulness as "average" and "low"* . . . The questionnaire data showing that *Mississippi's chancery court judges are less enthusiastic about the College's programs than the circuit and county court judges is supported by the field interviews.* Several chancery judges indicated their displeasure with the lack of courses geared specifically for them. They emphasized that the College's substantive programs were primarily in the area of criminal justice and often had little direct relevance for judges with civil jurisdiction.

3 COURTS STRATEGY, *supra* note 33, at 1-45 (emphasis added).

47. *Problems With State Courts Told*, CLARION-LEDGER (Jackson, Miss.), Dec. 15, 1973, at A1, A12.

group was named Mississippians for the Administration of Justice, Inc. and was incorporated on May 23, 1974.[48] The first President of that group was Francis J. Lundy, an executive with South Central Bell in Jackson. The other officers were Vice-President, Dr. Jerry C. McCall, a University of Mississippi professor and Secretary-Treasurer Elizabeth (Mrs. Robert F.) Power, former state president of Mississippi Women's Club from Greenwood.[49]

G. Creation of the Mississippi Judicial Council

In July 1974, the Mississippi Judicial College was invited to send representatives to a workshop at the Inns of Court in Snowmass, Colorado. The workshop, entitled "AJS Coordinating Judicial Mechanisms Project," was sponsored by the American Judicature Society, the Law Enforcement Assistance Administration, and the Institute for Court Management.[50] Five different states with identified problems or needs in the area of judicial administration came together to discuss how coordinating mechanisms could be devised to solve these problems or meet these needs.[51] The jurisdictions with their specific problem areas represented were: (1) Illinois courts and the State Law Enforcement Assistance Planning Agency budgeting; (2) Harris County, Texas, district attorney's office and court calendaring; (3) Mississippi, with no state agency for judicial administration; (4) Orange County, California, Board of Supervisors' office and its judicial functions; and (5) Florida's use of computerized records in criminal cases.[52]

Mississippi's representatives were: (1) Judge Darwin M. Maples, a circuit court judge from Lucedale who had been on the Judiciary Commission;[53] (2) Representative Mark J. Chaney, a member of the State House of Representatives from Vicksburg who was serving on the House Appropriations Committee; (3) James P. Brantley, a legislative draftsman with the Mississippi Senate Legislative Services Committee who was advisor to the Senate Judiciary Committee; and (4) Mary Libby Payne, an assistant attorney general of the State of Mississippi, who had served as chief of drafting and research for the Mississippi House of Representatives, and as the executive secretary for the by then defunct Judiciary Commission.[54]

After the two-week workshop, the four returned home committed to working for improvement in judicial administration in the court system in Mississippi. In

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48. Mississippi Secretary of State's File No. 206126, 210 Photostat Book 466-75.

49. *Id.*

50. *See* AMERICAN JUDICATURE SOCIETY, JUDICIAL COORDINATING MECHANISMS SNOWMASS WORKSHOP NOTEBOOK (June 29-July 13, 1974) (for information as to schedule, personnel, and resources) [hereinafter AMERICAN JUDICATURE].

51. *Id.*

52. *Id.*

53. Judge Maples also had directed the state's pilot law student intern program in conjunction with the University of Mississippi and the National Defender Program in 1968-69, and had initiated a cooperative effort with the Office of Vocational Rehabilitation of the State Department of Education in 1970 to help with pre-sentence investigations in his court.

54. AMERICAN JUDICATURE, *supra* note 50.

the 1975 legislative session, Representative Chaney introduced a bill to establish a judicial council and court administrator for the entire court system.[55] Unfortunately, that bill died in the House Committee,[56] but its introduction spotlighted interest in the concept.

Thereafter, the executive branch took action where the legislature had refused to do so. Through use of state discretionary funding, the governor's criminal justice planning division contracted with Resource Planning Corp. of Washington, D.C., to study the state's judicial system with emphasis on criminal prosecution and defense. Assisting in the research were the National District Attorneys Association, the National Center for State Courts, the American Judicature Society, and the Institute for Court Management.[57]

That group did extensive research and in 1976 filed a five volume report which was distributed to Mississippi judges and libraries, law libraries in the capitals of each of the fifty states, the Mississippi Senate Legislative Services Office, and the Mississippi House Management Committee.[58] Since the reports were expensive they were not distributed to the membership of the State Legislature, the only group that could have implemented the recommendations.[59]

The recommendations were not widely considered even though ultimately some of them have been adopted.[60] The highest priority item recommended was the "creation of a policy-making and administrative body to represent the whole Mississippi judiciary."[61] That dream was realized during the 1977 legislative session when the Judicial Council was created.[62] The lack of legislative commitment to the concept was revealed when the enabling legislation contained an automatic repealer (June 30, 1980) making the Judicial Council a temporary agency with only a three year tenure.[63] The encouraging part of the bill was that the initial life span of the Council was twice as long as the life granted in the creation of the Judiciary Commission nine years before.[64]

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55. H.R. 1037, Reg. Sess., 1975 Miss. House J. 139 (to provide for judicial council and court administrator). *See also* S. 2212, Reg. Sess., 1975 Miss. Senate J. 24 (to provide for a judicial council with authority to employ a court administrator introduced by Senator John Corlew, who represented Judge Darwin Maples' district). Neither bill passed.

56. H.R. 1037, Reg. Sess., 1975 Miss. House J. 139 (to provide for judicial council and court administrator).

57. 3 COURTS STRATEGY, *supra* note 33, at 1.

58. Pierce, *supra* note 35.

59. Pierce, *supra* note 35.

60. Among them were an official nominating group for guidance to the governor in filling judicial vacancies and a commission for judicial education. 3 COURTS STRATEGY, *supra* note 33, at 1-25, 26-33, 48.

61. MISSISSIPPI CRIMINAL JUSTICE DIVISION & RESOURCE PLANNING CORPORATION, 2 COURTS STRATEGY, A MASTER PLAN FOR COURTS IN MISSISSIPPI 3 (1976) [hereinafter 2 COURTS STRATEGY].

62. Act of Mar. 31, 1977, ch. 429, 1977 Miss. Laws 650 (originally codified at MISS. CODE ANN. §§ 9-15-1 to -9 (Supp. 1977)) (repealed June 30, 1980).

63. Act of Mar. 31, 1977, ch. 429, § 6, 1977 Miss. Laws 650, 653. Note should also be given to the fact that the state appropriated only $15,000 for the first fiscal year's operation. Act of Mar. 23, 1977, ch. 53, § 1, 1977 Miss. Laws 71. The 1978 appropriation was $32,645, but including outside sources the total budget was $162,645. Act of Mar. 31, 1978, ch. 170, 1978 Miss. Laws 249; MISSISSIPPI JUDICIAL COUNCIL, FIRST ANNUAL REPORT 4 (1979) [hereinafter MISS. JUD. COUNCIL].

64. Act of July 31, 1969, ch. 312, 1968 Miss. Laws 427.

Council membership was announced June 7, 1977 as follows:

> Chief Justice Neville Patterson, Mississippi Supreme Court, Monticello, Miss. (Chairman)
>
> Senator Carroll Ingram, Chairman, Senate Judiciary Committee en banc, Hattiesburg, Miss. (Vice-Chairman)
>
> Judge Emily Baker, Jackson County Court, Pascagoula, Miss.
>
> Representative Stone Barefield, Chairman, House Judiciary "B" Committee, Hattiesburg, Miss.
>
> Hon. Alvin Binder, Office of the Governor, Jackson, Miss.
>
> Senator Herman DeCell, Chairman, Senate Judiciary "B" Committee Yazoo City, Miss.
>
> Judge Mayo Grubbs, Executive Director, Justice Court Officers Association, Tupelo, Miss.
>
> Hon. Armis Hawkins, Attorney, Houston, Miss.
>
> Judge James Hester, 18th Circuit District, Laurel, Miss.
>
> Judge Darwin Maples, 19th Circuit District, Lucedale, Miss.
>
> Mrs. Elizabeth Powers, Executive Director, Mississippi Kidney Foundation, Greenwood, Miss.
>
> Representative John H. Stennis, Member, House Judiciary "A" Committee, Jackson, Miss.
>
> Judge Michael Sullivan, 10th Chancery District, Hattiesburg, Miss.
>
> Dr. Walter Washington, President, Alcorn State University, Lorman, Miss.
>
> Hon. Thomas H. Watkins, Attorney, Jackson, Miss.
>
> Judge Joseph E. Wroten, Washington County Court, Greenville, Miss.[65]

The executive director of that group was Dan M. McDaniel, Jr.

H. Work and Recommendations as Well as the Fate of the Council

The group did some excellent studies and made some real improvements. One of the most significant activities was the 1978 establishment of the Mississippi Courts Information System which compiled trial court statistics from 1973 to 1980.[66] The most permanent of their accomplishments were (1) the creation of the Commission on Judicial Performance[67] and (2) reform in the bar admissions procedure. The latter legislation abolished the diploma privilege for University of Mississippi Law Center graduates, abolished the preceptorship program, mandated graduation from an American Bar Association approved law school as a prerequisite for sitting for the bar examination, and, most importantly, took the

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65. MISS. JUD. COUNCIL, *supra* note 63, at 1.

66. MISS. JUD. COUNCIL, *supra* note 63, at 5.

67. *See infra* part II.A.3.

governance of the bar admissions process away from an executively appointed board and placed it under the jurisdiction of the supreme court.[68]

The Council went out in a blaze of glory (or infamy, depending on one's point of view) when it recommended the abolition of the justice court system.[69] The Judicial Council had also recommended that its three year temporary life be extended and the Council be funded. What happened was that the justice court remained and the Judicial Council died.[70]

In 1979, the Mississippi Judicial Council contracted with Ernest H. Short and Associates, Inc. for a study of judges' case loads and redistricting for the chancery and circuit courts.[71] Funding for that study was dependent upon the existence of the Mississippi Judicial Council. After the 1980 legislative session ended, Governor William Winter found available discretionary funds to honor that contract, and the redistricting study was completed under the Mississippi Criminal Justice Planning Commission, Office of the Governor; however, it was never considered for legislative action after completion.[72]

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68. Act of Nov. 1, 1979, ch. 486, 1979 Miss. Laws 999; MISS. JUD. COUNCIL, *supra* note 63, at 8. Like most legislative action, this was not the product of *only* the Judicial Council. The State Bar, beginning with a committee of the Young Lawyers Division, studied the operation of the bar admissions examination as early as 1976. Jerome Hafter chaired that committee and this author, as Dean of Mississippi College School of Law, served as resource person for the committee.

69. Even though the recommendation was not adopted, the executive director said this was the action that made him the most proud. Interview with Dan M. McDaniel, Jr., Executive Director of the Judicial Council, in Jackson, Miss. (July 23, 1986). To say that the Judicial Council/Justice Court controversy received much media attention would be an understatement. Note the following articles in the CLARION-LEDGER, a Jackson, Mississippi newspaper, throughout the legislative session of 1980. *Hinds Supervisors Favor Keeping Justice Courts*, CLARION-LEDGER, Feb. 4, 1980, at B1; *Consensus on Justice Courts Grows*, CLARION-LEDGER, (Editorial and Cartoon), Feb. 4, 1980, at B4; *Legal Process Starts for Upgrading Courts*, CLARION-LEDGER, Feb. 7, 1980, at B7; *Group Ok's Plan to Modify Justice Courts*, CLARION-LEDGER, Feb. 19, 1980, at A3; *Courts Need Genuine Reform*, CLARION-LEDGER, (Editorial), Feb. 22, 1980, at B4; *Move Underway to Scuttle State Judicial Council*, CLARION-LEDGER, Feb. 27, 1980, at A1, A15; *Senate Unit Delays Judicial Council Hearing*, CLARION-LEDGER, Feb. 28, 1980, at B7; *Behind Judicial Council Opposition*, CLARION-LEDGER, (Editorial), Feb. 29, 1980, at B4; (Cartoon), Mar. 3, 1980, at B4; *Senate Committee Denies Funds to Judicial Council*, CLARION-LEDGER, Mar. 4, 1980, at A1, A6; *Judicial Council Goes Before 2nd Senate Panel Today*, CLARION-LEDGER, Mar. 5, 1980, at A3; *Senate Subverts Judicial Reform*, CLARION-LEDGER, (Editorial and Cartoon), Mar. 5, 1980, at B2; *Judicial Council's Allies Review Data*, CLARION-LEDGER, Mar. 6, 1980, at A3; *Justice Courts: Bills of Choice*, CLARION-LEDGER, (Editorial), Mar. 6, 1980, at B4; *Cheers for Judicial Council*, CLARION-LEDGER, (Editorial and Cartoon), Mar. 7, 1980, at B4; *Lawyers Group Advocates Abolition of Justice Courts*, CLARION-LEDGER, Mar. 11, 1980, at B6; *House Committee Kills Justice Court Amendment*, CLARION-LEDGER, Mar. 12, 1980, at A1, A12; *Judicial Reform Muscled Aside*, CLARION-LEDGER, (Editorial and Cartoon), Mar. 13, 1980, at B4; *Nine of Ten Justice Court Measures Fail to Make Legislative Deadline*, CLARION-LEDGER, Mar. 14, 1980, at A4; *Merideth Seeks Way to Give Judicial Council New Lease*, CLARION-LEDGER, Mar. 17, 1980, at A3; *Judicial Council Fate at Stake*, CLARION-LEDGER, (Editorial), Mar. 17, 1980, at B2; *Irony on the Justice Court Front*, CLARION-LEDGER, Mar. 18, 1980, at B4; *Judicial Council in Trouble in Senate*, CLARION-LEDGER, Mar. 18, 1980, at B7; *Judicial Council Spared in Controversy*, CLARION LEDGER, Mar. 19, 1980, at B2; *Opponents Win Latest Round on Judicial Council's Future*, CLARION-LEDGER, Mar. 20, 1980, at A3; *Senate Writes Judicial Council's Obituary*, CLARION-LEDGER, Mar. 21, 1980, at A1, A12; *We Deserve What We Get*, CLARION-LEDGER, (Editorial), Mar. 26, 1980, at B4.

70. H.R. 748, Reg. Sess., 1980 Miss. House J. 1745 (to "reenact the judicial council of Miss."; died in House Committee); H.R. 757, Reg. Sess., 1980 Miss. House J. 1745 (to make an additional appropriation for the Judicial Council in order to fund the redistricting study, etc.; also died in House Committee); S. 2413, Reg. Sess., 1980 Miss. Senate J. 1994 (to reestablish the Judiciary Council was the subject of numerous actions that failed ultimately).

71. ERNEST H. SHORT AND ASSOCIATES, INC., THE COURTS DISTRICTING STUDY, REDISTRICTING PLANS FOR THE CHANCERY AND CIRCUIT COURTS 2 (1981).

72. Pierce, *supra* note 35.

The 1981 Legislature, however, proposed an amendment to Section 152 of the Mississippi Constitution of 1890 which would limit the number of chancery and circuit court districts to twenty each and would require the legislature to establish criteria by which redistricting should be accomplished after each federal decennial census.[73] That amendment was ratified by the electorate in November 1982, and inserted in the constitution on January 28, 1983.[74]

In 1984, the legislature set forth the criteria for determining the number of judges in each district.[75] Additionally, it charged the Judicial College of the University of Mississippi Law Center with the task of determining the data to be gathered and assimilated in regard to redistricting.[76] The Judicial College completed that function in 1984 when it filed its factual findings without any recommendations.[77] After such a promising beginning, the legislature designated the composition of the twenty chancery and circuit court districts exactly as they existed before the 1985 session without regard to any data showing the inequality of the arrangement.[78] There might be a question as to whether the legislature followed the mandate of the newly adopted constitutional amendment, but the court's only recourse then would be to perform the redistricting itself.[79] Court redistricting may be the most needed task in state government[80] and yet simultaneously the least likely for any state branch to initiate.[81]

I. Constitutional Study Commission 1985-86

The next concerted attempt at judicial reform crystallized in late 1985, when Governor William Allain assembled a body of three hundred volunteers for a constitutional study commission to examine the Mississippi Constitution of 1890 in detail and propose a draft for a new constitution.[82]

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73. Act of Apr. 1, 1981, ch. 708, 1981 Miss. Laws Extraordinary Sess. 1829 (codified at MISS. CONST. art. 6, § 152).

74. MISS. CONST. art. 6, § 152.

75. Act of Apr. 26, 1984, ch. 443, §§ 1, 2, 1984 Miss. Laws 229, 229-31 (currently codified at MISS. CODE ANN. § 9-5-3(3) (Supp. 1991) (for chancery); § 9-7-3(2) (Supp. 1991) (for circuit)). Act of June 1, 1985, ch. 502, §§ 1, 22, 1985 Miss. Laws 557, 558, 563 (currently codified at MISS. CODE ANN. §§ 9-5-3, 9-7-3 (Supp. 1991)) (abolishing court terms and changing the subsection numbering so it is now subsection 3 of both code sections).

76. Act of Apr. 26, 1984, ch. 443, §§ 1, 2, 1984 Miss. Laws 229, 229-31 (currently codified at MISS. CODE ANN. § 9-5-3(4) (Supp. 1984) (for chancery); § 9-7-3(3) (for circuit)). Act of Apr. 11, 1985, ch. 502, §§ 1, 22, 1985 Miss. Laws 557, 558, 563-64 (currently codified at MISS. CODE ANN. §§ 9-5-3(4), 9-7-3(4) (Supp. 1991)) (abolishing court terms and changing the subsection numbering so it is now subsection 4 of both code sections).

77. MISSISSIPPI JUDICIAL COLLEGE, REPORT TO THE LEGISLATURE: A COMPILATION OF CASELOAD STATISTICS AND OTHER DATA CONCERNING THE CHANCERY AND CIRCUIT (1984) [hereinafter MISS. JUD. C.].

78. Act of Apr. 11, 1985, ch. 502, §§ 1-42, 1985 Miss. Laws 557 (currently codified at MISS. CODE ANN. §§ 9-5-3 to -57, 9-7-3 to -53 (Supp. 1985)). *See* Miss. State Bar Minutes, 80th Annual General Assembly, at 32 (June 7, 1985), where Senator Martin Smith reported: "Terrell [Stubbs]'s held hearings on the redistricting; and ladies and gentlemen, he concluded and from my observation – I accepted that conclusion – that it was just a political reality that the legislature could not redistrict the courts."

79. MISS. CONST. art. 6, § 152 (1890, amended Supp. 1983).

80. *See infra* part II.C.

81. Mississippi State Bar Minutes, 80th Annual General Assembly, at 32 (June 7, 1985).

82. *Allain to Issue 300 Invitations for Constitution Committee*, CLARION-LEDGER (Jackson, Miss.), Nov. 15, 1985, at A1.

The Commission was chaired by former governor and retired Fifth Circuit Court of Appeals judge J. P. Coleman,[83] who almost thirty years earlier had led an unsuccessful crusade for constitutional revision.[84] The Commission was divided into nine committees, each of which elected its own officers and was responsible for studying and making recommendations for specified portions of the constitution to study.[85] As recommendations for specific changes were made, the whole group met from time to time to debate and act on those recommendations.[86] Participation was noticeably triggered by special interest in the subject matter to be addressed.[87] As more articles were adopted the crowd became smaller, but the debate seldom lagged.[88] As with all deliberative bodies, the final draft was the result of compromise, but the Judicial Articles contained proposals which sounded strangely familiar to former Judiciary Commission members:

Miss. Judicial Commission[89]	*Constitutional Study Comm.*[90]
A. 1. Create office of court administrator	§3 Administrative Director of Courts
2. *Temporary* appointment of judges to equalize workloads	§3 Chief justice may assign temporary judge, justices or retirees to *any* court
4. Assign trial judges to serve as Supreme Court Commissioners	§3 Chief justice may assign any judge to any court
5. Create Judicial Qualifications Comm.	§13 Creates Commission on Judicial Performance; follows language of §177 Miss. Constitution of 1890 added in 1979
7. Reinvest rule making power in court	§4 Supreme court shall have power to promulgate court rules

83. *Id.*

84. A Public Proclamation of the Governor Convening the Legislature of the State of Mississippi in Extraordinary Session. Act of Dec. 12, 1957, ch. 14, 1957 Miss. Laws Extraordinary Sess. 34 (originally codified at MISS. CODE ANN. of 1942 § 6271-09 (Supp. 1972)) (recodified at MISS. CODE ANN. § 35-5-73 (1990)) (repealed July 1, 1987); Ex. Sess., 1957 Miss. House J. 1482-1506, 1518-1526; Ex. Sess., 1957 Senate J. 1402-1411.

85. Governor's Press Release (Nov. 25, 1985) (available in files of Mississippi Department of Archives and History, Administration of William Allain, Constitutional Study Comm'n, Updated – 1985). The committees were: Executive Branch, Legislative Branch, Judicial Branch, Municipal Government, County Government, Economic Development, Elementary & Secondary Education, Higher Education, and Agriculture & Forestry. *Id.*

86. Memorandum from Brad Chism to Governor Allain and Staff (Feb. 11, 1986) (available in files of Mississippi Department of Archives and History, Administration of William Allain, Constitutional Study Comm'n 1986-1987, RG27 No. 1370).

87. Interview with Dr. Cora Norman, Director of the Mississippi Humanities Council and member of Mississippi Constitutional Study Comm'n, in Jackson, Miss. (June 18, 1987).

88. *Id.*

89. *See* MISS. JUDICIARY COMM'N, *supra* note 6, at 4.

90. *Constitution Study Commission, A Draft of a New Constitution for the State of Mississippi*, 7 MISS. C. L. REV. 1, 21-26 (1986).

	8. Adequate compensation, travel, and hospitalization	§3 Legislature shall make adequate and reasonable appropriation for the entire unified judicial system, exclusive of inferior courts established by the legislature that have provisions for other funding
C.	1. Relieve critical areas by adding one circuit and one chancery judge	§5 Supreme court establishes criteria for determining number of trial courts and judges
	2. Require gathering of court statistics	§12 Legislature will divide the state into trial court districts
E.	1. Upgrade justice of peace qualifications	§8 Only lawyers can hold judicial office
G.	1. Make appeals to circuit or chancery courts from state administrative agencies final unless by writ of certiorari to Mississippi Supreme Court	§7 Appeals to Supreme court are by writ of certiorari
I.	1. Research judicial selection	§10 Governor's appointment of all appellate judges, from nomination by Appellate Court Nominating Committee (§9) who shall stand for retention election after three years (§11) then serve for eight years before the next retention election (§12) Trial judges elected for four years.
	3. Set a reasonable minimum amount in controversy for appeals to Mississippi Supreme Court.	§7 Appeals to Supreme Court will be on writ of certiorari.

The Constitutional Study Commission's report received favorable attention in the 1987 Senate.[91] The House Constitution Committee report was "Do not pass."[92] It was brought out of the Committee by a minority report.[93] Twice the bill came to a vote but both times fell far short of the necessary two-thirds majority for passage.[94]

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91. S. 2229, Reg. Sess., 1987 Miss. Senate J. 53 (introduction of S. 2229), 142 (committee's favorable report), 231-38 (passage), 256-61 (passage on motion to reconsider).

92. 1987 Miss. House J. 540.

93. *Id.* at 544.

94. *Id.* at 648, 707-08.

With such inglorious fates of Mississippi's attempts at some type of statutory structure for the improvement of the administration of justice in Mississippi, one might reasonably conclude that no progress has been made. However, such is not the case as the remainder of this Article will demonstrate.

II. UPDATE ON JUDICIAL REFORM IN MISSISSIPPI: 1970-92

A. General Administration of Justice

1. Court Administrators

a. Supreme Court

The first recommendation dealing with the creation of the Office of Court Administrator for the court system in Mississippi did not originally come to pass in the way in which it was recommended. On November 1, 1974, the Mississippi Supreme Court administratively created the Office of Executive Assistant to the Supreme Court and appointed to that post Martin R. McLendon, who at that time was an assistant attorney general and the head of the state and local government division of that office.[95] Mr. McLendon continued to serve as Executive Assistant until June 30, 1986 when he retired.[96] Though the duties of the office were limited to the operation of the supreme court, many of the administrative duties that consumed the time and attention of the chief justice and the presiding justice were assumed by the court executive.[97]

Initially, Mississippi followed the Virginia Model, which provides a mature attorney to assist the entire court, with about half of his duties administrative and the other half of his duties as a staff attorney for the court.[98] The first court executive in Mississippi processed *pro se* motions; did analysis, preparation, and presentation in regard to petitions for rehearing; handled letters requesting responses; handled pre-submission matters such as motions to advance preference matters; and set fees, fines, and forfeitures.[99] His duties as to calendaring began when the supreme court clerk sent the list of cases ready for each month.[100] The court executive would then oversee the assignment of cases to panels which were drawn by lot.[101]

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95. Interview with Martin R. McLendon, Executive Assistant to the Supreme Court, in Jackson, Miss. (July 10, 1985) [hereinafter McLendon].

96. Interview with Amy Whitten, Supreme Court Administrator and senior staff attorney in Jackson, Miss. (June 18, 1987) [hereinafter Whitten].

97. McLendon, *supra* note 95.

98. McLendon, *supra* note 95.

99. McLendon, *supra* note 95.

100. McLendon, *supra* note 95.

101. McLendon, *supra* note 95.

Mr. Mclendon served as fiscal officer for the supreme court[102] and was in charge of professional personnel.[103] Additionally, he served as the court's liaison with the legislature, the Bar, and the general public.[104]

At the time of the Judiciary Commission's Report, the office of clerk of the supreme court was a statewide elective office.[105] The constitution was amended in 1976 to provide for appointment of the supreme court clerk by the court.[106] At that time the elected supreme court clerk's term continued through 1979. In 1979, the legislature by statute allowed the supreme court to appoint a clerk to serve at the pleasure of the court.[107] On December 31, 1985, Robert E. Womack, clerk of the supreme court since 1980, retired and was succeeded by Sue Gordon, long time staff member with the supreme court.[108] Ms. Gordon served until her death in 1989.[109] Linda Stone was appointed to succeed her January 1, 1990.[110]

On June 30, 1986, both Martin McLendon, Supreme Court Executive, and Robert White, Marshal, retired.[111] Chief Justice Neville Patterson's resignation was also effective on that date.[112] Under the leadership of new Chief Justice Harry G. Walker, numerous reorganizational plans were put into effect.[113] Mr. McLendon's and Mr. White's positions, being vacant, were abolished, and two staff attorney positions for the court were created.[114] In the fall of that year Glenda Tomlinson became the first staff attorney.[115] In February, 1987, Amy Whitten, a special assistant attorney general, became supreme court counsel and court administrator.[116]

The staff attorney handled motions and petitions, served in the absence of the court administrator, and performed any special projects for justices or court administrators, all under the assignment and direction of the court administrator.[117] The court administrator, as counsel to the court, was in charge of personnel matters, operations efficiency, docket management, budgeting, legislative liaison, and bar and trial court liaison and served as innovator and instigator of matters

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102. The budgets for circuit and chancery courts were still prepared by the State Department of Audit.

103. McLendon, *supra* note 95.

104. McLendon, *supra* note 95.

105. MISS. CONST. art. 6, § 168.

106. Act of Apr. 15, 1976, ch. 616, 1976 Miss. Laws 944 (calling for election to amend MISS. CONST. art. 6, § 168). It was ratified by the electorate on November 2, 1976, and inserted in the constitution by proclamation of the Secretary of State on December 8, 1976. MISS. CONST. art. 6, § 168 (amended 1976).

107. Act of Mar. 19, 1979, ch. 393, 1979 Miss. Laws 681 (codified at MISS. CODE ANN. § 9-3-14 (Supp. 1979)).

108. Whitten, *supra* note 96.

109. MISSISSIPPI SUPREME COURT, ANNUAL REPORT ii (1989).

110. *Id.* at 26.

111. Whitten, *supra* note 96.

112. Whitten, *supra* note 96.

113. Whitten, *supra* note 96.

114. Whitten, *supra* note 96.

115. Whitten, *supra* note 96.

116. Whitten, *supra* note 96.

117. Memorandum from Amy Whitten, Court Administrator, to Mary L. Payne, Professor of Law, Mississippi College (Mar. 4, 1988) (on file with author) (staff attorney job description).

beneficial to the improvement of the administration of justice in this state, all under the direct supervision of the chief justice.[118] In 1989, the legislature authorized the merger of the administration of both the supreme court clerk's office and the State Law Library in the supreme court.[119] In 1991, the expense (travel, office, special appointment judges, etc.) reimbursement and payroll for trial judges was placed under the authority of the supreme court[120] so that total fiscal management of the judicial branch was vested in the supreme court. Also added in 1991 was financial management for the board of bar admissions.[121]

Under Administrator Whitten's leadership, the central legal staff was expanded to include four attorneys and a paralegal.[122] They assisted with motions and petitions (1668 in 1991),[123] death penalty cases, bar and judicial discipline matters, proposed rules, case classification, and docket management.[124]

Perhaps the most noteworthy accomplishment in regard to advancement of the administration of justice was the computerization of the courts. Chief Justice Roy Noble Lee in his State of the Judiciary Address before the 1992 joint session of the legislature said:

> In the past five years, the Supreme Court has undergone revolutionary change in these areas. Through the responsive funding by the legislative branch, the appellate court now maintains a full scale automated operation, one which was recognized as the best of its type in the nation in 1988. This system, perhaps the single most important change in the court's support platform, was created in primary part through the overwhelming work of Sue Gordon, our beloved clerk who passed away in 1989.[125]

Even the Judiciary Commission could not foresee the progress in case management and fiscal management accomplished during the first five years of the Office of Court Administrator.

Regarding the assignment of judges and the maintenance of statistical records for the trial courts, little permanent change has been made. Although the Judicial Council established an excellent statistical reporting system,[126] when it died the statutory mandate to clerks to report also ceased. Later in 1984, in response to legislation,[127] the Mississippi Judicial College collected case filings data for chancery and circuit courts for the years 1980 through 1983.[128] That report was to serve as a

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118. Whitten, *supra* note 96.

119. Act of Mar. 6, 1989, ch. 321, 1989 Miss. Laws 31 (codified at MISS. CODE ANN. § 39-1-1 (Supp. 1989)); MISSISSIPPI SUPREME COURT, ANNUAL REPORT 24 (1989).

120. Act of June 1, 1991, ch. 373, §§ 1-3, 1991 Miss. Laws 213 (codified at MISS. CODE ANN. §§ 9-1-36, -105, 25-3-35(2) (Supp. 1991)).

121. MISSISSIPPI SUPREME COURT, ANNUAL REPORT 37 (1991).

122. *Id.*

123. *Id.* at 39.

124. *Id.*

125. Roy N. Lee, *State of the Judiciary Address*, THE MISS. LAW., Apr.-May 1992, at 10.

126. MISS. JUD. COUNCIL, *supra* note 63, at 5.

127. Act of April 26, 1984, ch. 443, 1984 Miss. Laws 229 (codified at MISS. CODE ANN. §§ 9-5-3, 9-7-3 (1991)).

128. MISS. JUD. C., *supra* note 77.

basis for redistricting and was unrelated to any need for temporary assignment of judges as anticipated by the Mississippi Judiciary Commission.

In the 1990 Supreme Court Annual Report,[129] circuit, chancery, county, and family court filing statistics for the years 1987 through 1990 were included.[130] The figures were acquired by mailing a survey to each of the court clerks and making extensive follow-up telephone calls.[131] The report included the following caveat:

> Their inclusion in this report is intended to highlight the range and volume of cases throughout Mississippi's trial districts. Some caution is required when interpreting these statistics. Counties have different methods of counting filings; therefore, these figures provide only a general indication of one county's filings in relation to the rest of the State. The Supreme Court is currently in the process of establishing uniform reporting procedures based on national standards.[132]

The next year's report gave the statistics for the years 1988 through 1991 with the same message.[133]

During the 1970s and 1980s, the legislation[134] that allowed the extension of a term to utilize the services of a judge temporarily assigned was virtually useless since no one possessed the power to collect the needed data nor to make such a temporary assignment.[135] Various schemes for assignment of judges were employed.[136] In the 1990s, even though the preparation and administration of the budget of the trial courts was vested in the supreme court[137] and sitting judges and judges on senior status were available for assignment in emergency and other cases,[138] the court had no methodology nor authorization to mandate locally elected court clerks to provide usable statistical data to foresee and forestall docket emergencies.

b. Trial Courts

Even though there was no centralized authority, various court districts in the state had local court administrators. The first trial court administrator's office in the state was established in 1973 under a Law Enforcement Assistance Grant.[139] Judge Floyd Logan, then a circuit court judge in Harrison County, implemented

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129. MISSISSIPPI SUPREME COURT, ANNUAL REPORT 43-65 (1990).

130. *Id.*

131. Telephone Interview with Cindy Freeman, Legal Assistant to Central Legal Staff of Supreme Court (June 26, 1992).

132. MISSISSIPPI SUPREME COURT, ANNUAL REPORT 43 (1990).

133. MISSISSIPPI SUPREME COURT, ANNUAL REPORT 43 (1991).

134. Act of Apr. 3, 1970, ch. 327, 1970 Miss. Laws 400 (originally codified at MISS. CODE ANN. of 1942 § 1647.5 (Supp. 1972)) (current version at MISS. CODE ANN. § 9-1-5 (1991)).

135. *See supra* part I.C.

136. *See infra* parts II.A.2.a., b., discussing various schemes for assignment of judges.

137. Act of Mar. 15, 1991, ch. 373, 1991 Miss. Laws 213 (codified at MISS. CODE ANN. §§ 9-1-36, -105, 25-3-35, -43 (Supp. 1991)).

138. MISS. CODE ANN. §§ 9-1-105, -107 (Supp. 1989).

139. Interview with Gayle Parker, Circuit Court Administrator for the Second Circuit Court District, in Gulfport, Miss. (June 2, 1988) [hereinafter Parker].

the program.[140] Harrison County contributed ten percent under a three year grant with LEAA providing the rest.[141] The first administrator was Nancy Hall, a fellow of the Institute of Court Management in Denver, Colorado.[142] After her first year of work in Gulfport, Mississippi, Hall assisted Jackson County in the establishment of a court administrator's office in Circuit Judge Darwin M. Maples' court.[143] In 1975, Nancy Hall left for employment in Chicago; and Gayle Parker, who for many years had been Harrison County's deputy circuit clerk in charge of the court department, became the court administrator.[144] An additional grant carried the office through 1978, in which year the legislature gave state authorization for the establishment of the Office of Court Administrator on the trial level.[145]

That law enumerated the following as the duties of court administrators in the trial courts of this state:

a) perform all nonjudicial tasks of the court;
b) maintain all statistical reports;
c) serve as liaison with the general public and members of the bar;
d) coordinate and assist in the duties of the clerks of the courts of the district related to the judicial duties of the clerks;
e) provide general administrative support for all judges and chancellors of the district; and
f) perform other duties assigned by the judges.[146]

The duties of court administrators generally may be unfamiliar to the public and the bar, as is illustrated by this remark made to a New Jersey court administrator after his speech to a civic club: " 'From your title, I'd always assumed you were the tennis pro at one of the local country clubs.' "[147] In the 1980s there appeared to be even less clarity regarding the role of court administrators in the trial courts of Mississippi. This fact is evidenced by the difficulty this author experienced in determining the number of Section 9-17-1 court administrators serving in the trial courts of this state in the 1980s.

Robert D. Church, coordinator of the Mississippi Judicial College, circulated a request for job descriptions of local court administrators on October 4, 1985. From those job descriptions, seven administrators were identified. In April, 1986, Elizabeth DeCoux, a third year law student at Mississippi College School of Law researching trial court administration, circulated a questionnaire to help determine the number and locate the names and addresses of local administrators.[148]

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140. *Id.*
141. *Id.*
142. *Id.*
143. *Id.*
144. *Id.*
145. Act of June 1, 1978, ch. 531, 1978 Miss. Laws 1115 (current version at MISS. CODE ANN. §§ 9-17-1, -5 (1991 & Supp. 1993)).
146. MISS. CODE ANN. § 9-17-3 (Supp. 1978).
147. Edward B. McConnell, *The Role of the State Administrator, in* JUDICIAL ADMINISTRATION: TEXT AND READINGS 154 (Russel R. Wheeler & Howard R. Whitcomb eds., 1977) [hereinafter McConnell].
148. A copy of the conclusions of the survey are available in the office of the author.

From that survey, with sixty or seventy-five percent of the counties reporting, seven circuit court districts said they had one or more court administrators serving the district with a total of twelve.[149] With sixty-five or seventy-nine percent of the counties reporting, twelve chancery court districts reported having one or more court administrators serving the district with a total of twelve.[150] Apparently, some court personnel may believe they are court administrators even though the office has not been established in that court as provided in Section 9-17-1.[151]

Additional confusion arose from the absence of any central state-wide office of court administration and the resulting disparity in the actual duties of those administrators appointed pursuant to Section 9-17-1 as seen by reading the survey results. Their duties ranged from preparation of juror profile lists to tracking services for district attorney's offices beginning with the arrest and carrying through to final hearing of appeal in criminal cases.[152] Other duties performed include: notifying attorneys of court dates, photocopying, filing, answering the phone, serving as receptionist, ordering supplies, and other clerical duties.[153] From the latter list, one can see that in many instances the local administrator has assumed duties of the elected, fee-paid clerk rather than performing additional court administrative duties which have been and still may be going undone.

The purpose of the court administrator is to bring the efficiency and economy of the well-managed business to that world in which individualism and studied deliberation must never be sacrificed: the courts.[154] Although the legislature, by enacting the law providing for court administrators, established the framework for the task, uniformity and organization were badly lacking until recently when the court administrators formed the Mississippi Court Administration Association. The group was organized with the encouragement of Bob Church within the Mississippi Judicial College and held its first meeting in Natchez in the spring of 1987.[155] Gayle Parker was elected the first president.[156]

The next meeting was held in the fall of 1987 in conjunction with the Judges Conference.[157] Several judges for the first time became interested in creating such an office. In fact, in 1988 Neshoba County was added to the list of Harrison, Jackson, Hinds, Forrest, Marion, Lauderdale, Jones, and Rankin Counties that had court administrative offices serving their family and county courts and the circuit and chancery court districts.[158] By 1992, there were twelve circuit court administrators and six assistants serving thirty seven counties; eleven chancery court

149. *Id.*
150. *Id.*
151. *Id.*
152. *Id.*
153. *Id.*
154. McConnell, *supra* note 147.
155. Parker, *supra* note 139.
156. Parker, *supra* note 139.
157. Parker, *supra* note 139.
158. Parker, *supra* note 139.

administrators and one assistant serving seventeen counties; and eight county family/youth court administrators and two assistants serving six counties.[159] This association serves as a source of continuing education, but administrators say they benefit most from the interaction with one another as needs and opportunities are identified at their meetings.[160]

2. Workload

a. Supreme Court

Both the legislature and the supreme court attempted by various means to attack and conquer the increasing workload of the supreme court. On one occasion Chief Justice Neville Patterson reminded the Mississippi State Bar Convention that the supreme court had not been increased in size since 1952 while the trial court judges had multiplied greatly in number.[161] The supreme court primarily addressed the appellate *procedures*. The legislature's attempts were aimed at *personnel*.

In 1973, the legislature sought to relieve the supreme court's ever increasing volume of cases by passing legislation that would allow a justice between the ages of 68 and 73 years, who resigned before his 72nd birthday and who had years remaining in his term, to perform such service as the court might designate from time to time.[162] With some limitations as to times and numbers of such judge's service, a salary equal to two thirds the salary of an associate justice was authorized.[163] The judge could work but not vote on decisions.[164]

During 1974, the court began an intensive study and ultimate revision of the rules under which the supreme court operated. In accordance with an order dated July 25, 1974,[165] the court began to sit in panels of three instead of in panels of five which had necessitated one judge's sitting with two panels consecutively before he was free to study and write opinions in the cases he had heard on oral argument.[166] The rationale for the change to sit in divisions of three came from the fact that, in 1916, when three more justices were added to the court,[167] the constitution was also amended to authorize the court to sit in two panels of three.[168] Because there were only six members of the court, each panel constituted one half the court.

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159. STATE OF MISSISSIPPI JUDICIARY DIRECTORY AND COURT CALENDAR 34-36 (1992).

160. Parker, *supra* note 139.

161. Mississippi State Bar Minutes, 79th Annual General Assembly, at 67 (June 8, 1984).

162. Act of Mar. 29, 1973, ch. 452, 1973 Miss. Laws 580 (currently codified at MISS. CODE ANN. § 9-3-12 (1991)).

163. *Id.*

164. *Id.*

165. MISS. S. CT. R. 35, 311-17 So. 2d xxxiii (Miss. Cases) (1974); B-Q Mississippi Supreme Court Minute Book 620 (July 25, 1974) (located in the Miss. Supreme Court Clerk's Office).

166. *See* MISS. JUDICIARY COMM'N, *supra* note 6, at 43 (in which this problem of poor utilization of time and judicial personnel was identified and emphasized).

167. MISS. CONST. art. 6, § 145A.

168. MISS. CONST. art. 6, § 149A.

Since 1952, there have been nine members of the court;[169] however section 149A was not amended, so the court was still authorized to sit in panels of three. The 1974 rule followed the same constitutional mandate that if there is a dispute among the members of the panel of three justices, the matter must go to *en banc* conference for a decision by the majority of the justices.[170] That rule was challenged in 1975 on motion for rehearing in the case of *Russell v. State*[171] and was held to be constitutional. The court defended its new rule as follows:

> The Court consisted of three judges until 1916. From 1916 to 1952 the Court consisted of six judges who sat in divisions of three. So it is that in all but twenty-two years of the state's history, all, or nearly all, decisions of the Supreme Court have been by three judges. Much of the volume of judicial decisions of both state and federal courts is accomplished in panels or divisions of three judges.
>
> The Court decided to sit in three-judge divisions only after the most deliberate study and consideration of all aspects of the question. Rule 35, Rules of the Supreme Court as amended, goes much further than the Constitution requires in assuring that cases are brought before the full Court for en banc hearing whenever it appears appropriate. These provisions are provided in Rule 35: (1) That the judges are rotated as often as administratively practical; (2) That cases are considered and adjudged by the full Court (a) whenever there is a difference between the judges of the division, (b) whenever any judge of any division, as late as fifteen days after judgment is entered, certifies (1) that in his opinion a decision is in conflict with any prior decision of the Court, or any division thereof, or (2) whenever the cause is of such importance that it should be considered and adjudged by the full Court.
>
> Although not necessary to this decision, it is appropriate to state that all petitions for rehearing are adjudged by the full Court; also, no written opinion is handed down until each of the nine judges has read it and either concurred therein or noted his dissent.[172]

The decision was unanimous except for Justice Henry Lee Rodgers who wrote a long dissent setting forth the principles of constitutional construction required in harmonizing amendments with the body of the constitution. He wrote: "I am convinced that the will of the people of this state is being thwarted by an effort of this Court to meet the obvious need of an intermediate appellate court to expedite and facilitate the progress of the growing caseload of appeals to this Court."[173] However, the die was cast and efficiency reigned.

That same year, the court revised and adopted its rules.[174] Rule 43 eliminated written opinions in all cases where the judgment was affirmed except in those instances where a majority of the justices deciding the case determined that a

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169. MISS. CONST. art. 6, § 145B.

170. MISS. S. CT. R. 35, B-Q Mississippi Supreme Court Minute Book 620 (Dec. 12, 1974) (located in the Miss. Supreme Court Clerk's Office).

171. 312 So. 2d 422 (Miss. 1975).

172. *Id.* at 424-25.

173. *Id.* at 425.

174. MISS. S. CT. R. 1-43, B-R Mississippi Supreme Court Minute Book 167-75 (July 28, 1975) (located in the Miss. Supreme Court Clerk's Office).

written opinion would add to the value of the jurisdiction of the state.[175] Rule 44 was added later[176] to require a trial judge's certificate of request with any motion by a court reporter for additional time in which to prepare the record on appeal to combat delay at that stage of the case. This was an attempt to keep the trial judge apprised of how long it takes from notice of appeal until the record is completed. Then Rule 43 was changed drastically[177] to reduce the number of published opinions and to provide for unpublished opinions. At that time there were a limited number of law clerks and it was common knowledge that writing the opinion after the case was decided took more judge time than the oral argument hearing and decision itself. To better utilize judicial time, these measures were initiated by the court.

Just as the rule regarding sitting in panels of three was challenged, so was Rule 43. The claim in the case of *Morea v. State*[178] was that the elimination of a written opinion in a criminal case violated statutory law.[179] The court held that the statute is advisory only and is not to be construed as requiring needless opinions stating well-established rules of law.[180]

Without question, the change in the methods of the operation of the supreme court improved efficiency in handling an ever increasing workload, but the 1973 legislative act allowing for supernumerary judges, though admirable on paper, furnished no relief. No judge resigned following the passage of that provision until Presiding Justice Henry Lee Rodgers resigned in January, 1976.[181] A study of the supreme court minutes reveals no record of Justice Rodgers' ever returning for additional service to the court.

Therefore, in 1976, after making changes in its rules, the court requested immediate relief. This relief came in the form of temporary legislation authorizing circuit and chancery judges to serve as "commissioners" of the supreme court for short-term appointments (usually one week), allowing the court to decide more cases in the same time period.[182] The trial judges were responsive. From August 3, 1976, to May 31, 1977, twenty-nine trial judges served as commissioners,

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175. *Id.*

176. B-R Mississippi Supreme Court Minute Book 242 (Oct. 6, 1975) (located in the Miss. Supreme Court Clerk's Office).

177. B-R Mississippi Supreme Court Minute Book 269-70 (Oct. 23, 1975) (located in the Miss. Supreme Court Clerk's Office).

178. 329 So. 2d 527 (Miss. 1976).

179. MISS. CODE ANN. § 9-3-41 (1972). The section reads:

> In all cases settling important principles, in cases to be remanded, and in all cases where the judgment or ecree of the court below is reversed, and in all felonies where the punishment prescribed is ten years or more, the opinion of the supreme court shall be in writing stating the reasons upon which the decision is made; and the opinion shall be recorded by the clerk in a well-bound book kept for that purpose.

Id. This section was ultimately repealed. Act of Apr. 12, 1991, ch. 573, § 141, 1991 Miss. Laws 979, 1014.

180. 329 So. 2d 527 (Miss. 1976).

181. B-R Mississippi Supreme Court Minute Book 338 (Jan. 1976) (located in the Miss. Supreme Court Clerk's Office).

182. Act of May 6, 1976, ch. 430, 1976 Miss. Laws 630 (codified at MISS. CODE ANN. § 9-3-28 (Supp. 1976) (repealed Supp. 1978)).

some of them more than once.[183] The next year the number was smaller. The law was repealed by its own terms on December 31, 1978.[184]

In 1981, the legislature, employing its now-popular three year automatic repealer clause, granted the supreme court authority to request any retired supreme court justice, except those defeated for office, to return to active service on an emergency basis.[185] The recall would be on the consent of the retiree who would "assist the court in the disposition of causes pending in the court," but without a vote in the outcome.[186] This legislation could have proven to be more palatable to retired judges than the 1973 Act for several reasons: (1) There were no restrictions as to age, so that a justice in his fifties or early sixties could take advantage of it, whereas the age limit in the 1973 Act was sixty-eight through seventy-two; (2) The justice need not have retired during his term but may have retired by declining to seek re-election; (3) His service would be limited to only three months per year which would result in an income not in excess of twenty-five percent of the present salary of an associate justice;[187] whereas, in the 1973 Act, he was limited to four years, but during that time he would receive only two-thirds of the salary of an associate justice though working the same amount of time; (4) Under the 1981 Act, the retiree was eligible to continue receiving his full retirement benefits in addition to the salary paid up to twenty-five percent of an associate's salary without deductions as contributions toward retirement; while under the 1973 Act, he was deemed to be an official elected by popular vote, meaning that he would have to make contributions to the retirement system and yet not be subject to the then mandatory retirement at seventy.[188] Also, the 1973 Act prohibited the resigned but serving judge from receiving any retirement benefits.[189]

The 1981 Act was not allowed to automatically die but was reenacted in 1984 with the repealer deleted.[190] A careful searching of the supreme court minute books from 1981 to 1988 reveals that only Judge R. P. Sugg, who retired on January 15, 1983,[191] has ever returned to serve as a supernumerary judge under the Act.[192] Realizing that even this more enticing relief was dependent on finding willing and able retired judges, making it tenuous at best and non-existent at worse, Chief Justice Neville Patterson, in his State of the Judiciary address to the 1984 Mississippi State Bar Convention, called upon the State Bar to study the feasibility

183. B-R Mississippi Supreme Court Minute Book 530 (Jan. 1976) (located in the Miss. Supreme Court Clerk's Office).

184. Act of May 6, 1976, ch. 430, 1976 Miss. Laws 630 (originally codified at MISS. CODE ANN. § 9-3-28 (Supp. 1976)) (repealed 1978).

185. Act of June 1, 1981, ch. 360, 1981 Miss. Laws 803 (codified at MISS. CODE ANN. § 9-3-6 (Supp. 1981)).

186. *Id.*

187. He would be paid monthly an amount one twelfth of an associate justice's annual salary.

188. Act of June 1, 1981, ch. 360, 1981 Miss. Laws 803 (codified at MISS. CODE ANN. § 9-3-6 (Supp. 1981)).

189. Act of Mar. 29, 1973, ch. 452, 1973 Miss. Laws 580 (currently codified at MISS. CODE ANN. § 9-3-12 (1991)).

190. Act of Mar. 24, 1984, ch. 449, 1984 Miss. Laws 267.

191. B-W Mississippi Supreme Court Minute Book 167 (located in the Miss. Supreme Court Clerk's Office).

192. B-X Mississippi Supreme Court Minute Book 201 (Jan. 15, 1983) (located in the Miss. Supreme Court Clerk's Office).

of the creation of an intermediate appellate court or offer some other alternative for relief.[193] President Ernest Graves appointed a bar task force chaired by Scott Welch, a practicing attorney of Jackson, to perform this function.[194]

At the 1985 convention of the Mississippi State Bar,[195] the study committee's report ended with a recommendation for the establishment of a court of criminal appeals whose decisions would be final.[196] At the business meeting of the convention that recommendation was rejected as was a substitute recommendation for a three panel intermediate appellate court.[197] What passed was a recommendation for additional study.[198]

It should be noted that then Presiding Justice Harry Walker (later Chief Justice) reported to the 1986 Mississippi State Bar Convention that he advised against too hasty a recommendation of an intermediate appellate court and provided news of the supreme court's progress in decreasing its backlog appreciably with optimism of even better progress in the upcoming year.[199] The supreme court's annual statistical reports show that although the backlog of cases, as well as the filings and dispositions, had increased during the years following the repeal of the court commissioners' legislation, the backlog during 1985 had decreased by only thirty-eight cases.[200]

Though seemingly encouraging, this statistic shows that the backlog in 1985 was 1033 cases while the backlog in 1984 had reached an all-time high of 1071 cases.[201] When one compares the 1985 backlog of 1033 cases with the backlog of 415 cases in 1980,[202] the critical condition remaining in the supreme court's caseload can be viewed from a more realistic perspective. Despite Chief Justice Walker's rosy predictions, the cases pending at the end of 1986 rose to 1131[203] and to 1191 the next year.[204] For a graphic demonstration of the condition of the backlog in spite of increased dispositions, see the chart below.[205]

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193. Chief Justice Neville Patterson, Address at the 1984 Miss. State Bar Convention (June 8, 1984), *in* Miss. State Bar Minutes, 79th Annual General Assembly, at 71 (June 8, 1984).

194. *Mississippi State Bar Annual Report, 1984-85*, THE MISS. LAW., Sept.-Oct. 1985, at 57-76 [hereinafter ANNUAL REPORT].

195. Mississippi State Bar Minutes, 80th Annual General Assembly, at 5 (June 7, 1985) [hereinafter Miss. State Bar Minutes].

196. ANNUAL REPORT, *supra* note 194.

197. Miss. State Bar Minutes, *supra* note 195.

198. Miss. State Bar Minutes, *supra* note 195, at 96.

199. Miss. State Bar Minutes, 81st Annual General Assembly, at 67 (June 7, 1986). "[W]ithin a two year period you are going to see the backlog reduced substantially and the time in which you will get a decision on your case made much more promptly." *Id.*

200. MISSISSIPPI SUPREME COURT, ANNUAL REPORT 3 (1985).

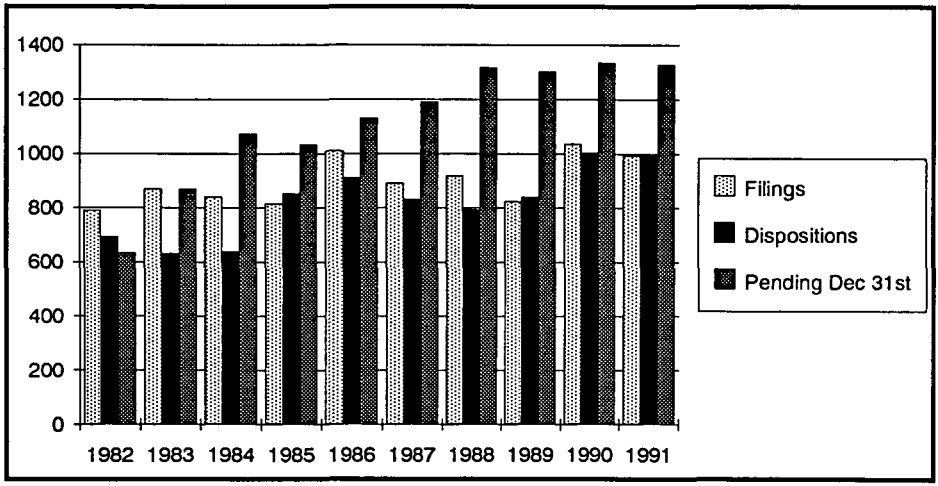
201. *Id.*

202. MISSISSIPPI SUPREME COURT, ANNUAL REPORT 2 (1980).

203. MISSISSIPPI SUPREME COURT, ANNUAL REPORT 3 (1986).

204. MISSISSIPPI SUPREME COURT, ANNUAL REPORT 27 (1991).

205. *Id.*



Although what the study recommended in 1985 was not done, several new procedures were instituted within the court. One is what is known as the "green light" system which directs cases onto an expedited docket.[206] The other cases are placed on the regular docket.[207]

A second change was in granting oral argument only upon a showing of specific need.[208] Prior to that change, oral argument was granted routinely in over forty percent of the cases.[209] In 1987, oral arguments were had in only twenty percent of the cases.[210] Chief Justice Harry G. Walker resigned in September 1987, and Roy Noble Lee was elevated to the post of chief justice. On January 1, 1988, the new Rules of Appellate Practice took effect, further streamlining the perfecting of appeals and practice before the court.[211]

Perhaps the most innovative of all changes was the automation of the supreme court, giving an electronic communications link internally and with the clerk's office with plans for joining the trial courts as well. Chief Justice Roy Noble Lee said, "The concepts of docket control and case management are integral components to our automation plan. We anticipate that the Court will be better equipped in the near future to control its caseload and to direct our efforts toward further reduction of the backlog."[212]

In 1989, the legislature consolidated and revised its statutes to authorize the chief justice to make temporary appointments in cases of emergency to assist with congested dockets, in circumstances of disability, sickness or disqualification; or

206. Miss. State Bar Minutes, 81st Annual Business Session, at 68 (June 7, 1986).

207. *Id.*

208. *Id.*

209. *Id.*

210. Chief Justice Roy Noble Lee, State of the Judiciary, Address at the 82nd Annual General Assembly of the Miss. State Bar (June 4, 1988).

211. *Id.*

212. *Id.*

prior to permanent appointments constitutionally mandated to be made by the governor.[213] It also provided for judges taking senior status.

Specific full-time relief was provided to the court in 1990[214] with the grant of authority for the supreme court to appoint one magistrate for each supreme court district, each of whom was to possess the qualifications required of circuit and chancery court judges.[215] These magistrates were to "assist the Supreme Court in the performance of its duties and in the disposition of the causes now pending in the supreme court and in the determination of such causes as may be presented to the supreme court for determination."[216] The clerk of the supreme court was directed to maintain statistics on the effect of the work of magistrates on the pending workload of the court.[217]

It is obvious that no one expected this legislation to be the final answer to the supreme court's backlog problem because this law will be automatically repealed December 31, 1995.[218] Before that time, however, the court will have enough years of experience to evaluate this experiment before its automatic demise. If it has been no more than a stopgap measure masking the real problem, its continuation might be unnecessary. If it has provided real relief in turning the backlog problem around, consideration of an intermediate appellate court may be discontinued. After two years' operation, the backlog has remained almost constant due to greatly increased filing.[219]

b. Trial Courts

In regard to trial caseloads, even though there is no central authority for assigning judges temporarily to relieve a district's caseload, the Governor could appoint "some person of law knowledge" to serve during the disability of a trial judge.[220] In case a judge should recuse himself and "the attorneys therein cannot agree on a member of the bar to preside in his place" and when such facts are certified to the Governor, he "shall commission some like person to attend and preside in said cause."[221]

Additionally, judges may agree to *help* judges in a district other than their own, and shall receive compensation on a *per diem* basis, as if specially commissioned. Until 1988, however, each judge was limited to receiving no more than $250 per

213. Act of Apr. 25, 1989, ch. 587, §§ 1-4, 1989 Miss. Laws 804 (current version at MISS. CODE ANN. §§ 9-1-101, -103, -105, -107) (repealing MISS. CODE ANN. §§ 9-1-13, -14, -15, 11-1-11, -13, -15 (Supp. 1989)).

214. Act of Mar. 13, 1990, ch. 363, 1990 Miss. Laws 119.

215. *Id.* The qualifications required of circuit and chancery court judges are that they be 26 years of age, and a citizen and practicing attorney for at least five years in the state.

216. *Id.*

217. MISS. CODE ANN. § 9-3-49 (Supp. 1990).

218. Act of Mar. 13, 1990, ch. 363, 1990 Miss. Laws 119.

219. MISSISSIPPI SUPREME COURT, ANNUAL REPORT 27 (1991).

220. MISS. CODE ANN. § 9-1-13 (1972) (repealed by 1989 Miss. Laws 587, but providing similar authority to the chief justice). *See* Letters of Appointment for numerous special appointments in each governor's administration (available in the Mississippi Archives).

221. MISS. CODE ANN. § 9-1-13 (Supp. 1988) (repealed 1989).

calendar year.[222] That would limit any judge to less than one week a year.[223] After 1988, the judge serving outside his district received a fair *per diem* without limitation.[224]

Nothing in the code would prohibit judges from cooperating with each other for no extra compensation. Conversations with some trial judges show that such was common practice.[225] In 1983, the legislature passed authority for emergency relief for chancery and circuit courts to utilize retired trial judges or supreme court justices if they certified their willingness to serve by filing that information with the supreme court.[226] These supplemental judges during service in the trial courts, like those returning to supreme court service,[227] were limited in how much they could earn in any calendar year, but were allowed to continue to draw their state retirement continuously.[228]

No judges, however, were appointed under that law until after April 21, 1986, the effective date of an amendment[229] to section 9-1-14, which stated: "Judges appointed pursuant to this section shall receive, until December 31, 1987, the full salary and office expenses currently in effect for a chancery or circuit court judge pursuant to section[s] 25-3-35 and 9-1-36."[230] During the period when retired judges could receive full salary as well as retirement, eight judges were appointed.[231] Though several of those served into the first quarter of 1988, only three judges agreed to appointments in 1988 and those for only short-term appointments.[232]

In 1989, the legislature tried a new approach for expanding judicial personnel. Retired judges—even those defeated at the polls—who were at least sixty-two

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222. Miss. Code Ann. § 9-1-13 (Supp. 1988) (repealed 1989); Miss. Op. Att'y. Gen., Nov. 7, 1967. *See also* MISS. CODE ANN. § 11-1-11 (Supp. 1988) (repealed 1989) (the disqualified judge may require a judge not "in term" to hold court for him).

223. Based on judicial salaries in the 1980s. *See infra* part II.A.5.

224. Act of June 1, 1988, ch. 429, 1988 Miss. Laws 279 (codified at MISS. CODE ANN. §§ 11-1-11, 9-1-13, 11-1-13 (Supp. 1988)) (repealed 1989) (paid out of the general fund of the county to which he is assigned to hold court).

225. McLendon, *supra* note 95; Telephone Interview with Chancellor Billy G. Bridges, 20th Chancery Court District (July 28, 1986).

226. Act of Apr. 13, 1983, ch. 518, 1983 Miss. Laws 676 (originally codified at MISS. CODE ANN. § 9-1-14 (Supp. 1983)) (repealed 1989).

227. MISS. CODE ANN. § 9-3-6 (Supp. 1984).

228. Act of Apr. 13, 1983, ch. 518, 1983 Miss. Laws 676 (originally codified at MISS. CODE ANN. § 9-1-14 (Supp. 1983)) (repealed 1989).

229. Act of Apr. 21, 1986, ch. 504, § 1(6), 1986 Miss. Laws 925, 925 (codified at MISS. CODE ANN. § 9-1-14 (Supp. 1986)) (repealed 1989).

230. *Id.*

231. Chief Justice Roy Noble Lee's file of appointments (available in the Mississippi Archives).

232. *Id.* Though not the kind of emergency relief anticipated in the 1983 legislation, there have been appointments to serve between the time a judge resigns or dies until the Governor appoints someone to fill the vacancy. That happened when Chief Justice Harry G. Walker retired in September 1987, and Judge Rubel Griffin (who had been elected to the supreme court with a term beginning January 1988) was appointed to fill out the year. Then retired Chancery Judge Frank Alexander was appointed by the chief justice to fill Judge Griffin's chancery post. The Governor then appointed Judge Vincent Sherry to fill the unexpired term. Judge Sherry was murdered, and the Chief Justice appointed retired Judge Walter O'Barr to serve until the Governor appointed Judge Jerry Terry. Parker, *supra* note 139.

years old and had served at least eight years as a judge or justice could file certification for senior status.[233] Their retirement would not be reduced nor would they have to contribute to the retirement system from any senior status compensation.[234] For each day of service they would receive 1/260th of the current salary for the judicial office in which they would serve.[235] Their necessary expenses would be reimbursed and they would be required to fulfill continuing judicial education requirements.[236] A judge who was defeated for re-election "shall not be eligible for appointment as a special judge in the district in which he served prior to his defeat."[237]

In 1990, sixteen judges qualified for senior status.[238] With the chief justice's new appointment power upon request of the senior trial judge on an emergency basis (i.e. overloaded docket),[239] 146 special appointments were made, most of them of senior status judges.[240] The next year 210 short-term appointments were made, fifty-two of which were filled by retired judges on senior status.[241] The rest were filled by sitting judges.[242]

A sitting judge receives no additional compensation for service outside his district.[243] A retired judge may receive no more than twenty-five percent of the current salary in effect for a trial judge; however, his retirement will not be affected by the additional compensation.[244] Though not accomplished as recommended in 1970, ultimately through a back door approach, temporary assignment of judges (including use of resources offered by retired judges) has been accomplished. However, it is initiated not by statistics, but on the *request* of a senior judge.[245] The "software supporting the Mississippi Judicial Automation System was installed in Harrison County as a pilot site."[246] With Mississippi moving toward statewide court automation, the request and appointment system should become more systematic.

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233. Act of Apr. 25, 1989, ch. 587, § 4, 1989 Miss. Laws 804, 806 (originally codified at MISS. CODE ANN. § 9-1-107 (Supp. 1989)) (current version at MISS. CODE ANN. § 9-1-107 (1991 & Supp. 1993)).

234. *Id.*

235. *Id.*

236. *Id.*

237. Act of Apr. 25, 1989, ch. 587, § 3, 1989 Miss. Laws 804, 804-06 (originally codified at MISS. CODE ANN. § 9-1-105 (Supp. 1989)) (current version at MISS. CODE ANN. § 9-1-105 (1991 & Supp. 1993)) (amended in other respects by Act of Mar. 15, 1991, ch. 373, § 2, 1991 Miss. Laws 213, 214-16).

238. MISSISSIPPI SUPREME COURT, ANNUAL REPORT 70 (1990).

239. Act of Apr. 25, 1989, ch. 587, § 3, 1989 Miss. Laws 804, 804-06 (originally codified at MISS. CODE ANN. § 9-1-105 (Supp. 1989)) (current version at MISS. CODE ANN. § 9-1-105 (1991 & Supp. 1993)) (amended in other respects by Act of Mar. 15, 1991, ch. 373, § 2, 1991 Miss. Laws 213, 214-16).

240. MISSISSIPPI SUPREME COURT, ANNUAL REPORT 70 (1990).

241. MISSISSIPPI SUPREME COURT, ANNUAL REPORT 68 (1991). *Id.*

242. *Id.*

243. MISS. CODE ANN. § 9-1-105 (1991 & Supp. 1993).

244. *Id.*

245. Act of Apr. 25, 1989, ch. 587, § 3, 1989 Miss. Laws 804, 804-06 (originally codified at MISS. CODE ANN. § 9-1-105 (Supp. 1989)) (current version at MISS. CODE ANN. § 9-1-105 (1991 & Supp. 1993)) (amended in other respects by Act of Mar. 15, 1991, ch. 373, § 2, 1991 Miss. Laws 213, 214-16).

246. MISSISSIPPI SUPREME COURT, ANNUAL REPORT 37 (1991).

In addition to temporary appointments, permanent judicial offices have been provided for some trial courts. To handle the burgeoning mass of domestic relations cases, the legislature in 1985 authorized chancery court judges to appoint family masters to hear such cases.[247]

To handle the special problems of having the penitentiary in its district, a permanent magistrate was authorized for the Fourth Circuit Court District to hold hearings at Parchman.[248] The magistrate is to receive a salary up to eighty-five percent of that of a circuit judge.[249] Much "guard time" cost is saved by not having to transport prisoners to the county seat for judicial hearings.[250] The litigants in the fourth district no longer have to wait for all of the penitentiary's court business to be handled on a preferential basis before having calendar settings available for civil litigants.[251]

Procedural changes have addressed more efficient use of trial judges' time. In 1982, circuit judges were authorized to assign cases to the county court judge for trial when the docket became overcrowded.[252] Chancery judges were granted that power in 1989.[253] Although the jurisdiction of the circuit court, according to the statute, still begins at $200,[254] the jurisdiction of the county court has been amended to include cases up to $50,000 in controversy,[255] automatically eliminating those cases from the circuit court docket in any county having a county court.

The procedural change that has brought the greatest degree of flexibility to judicial calendaring came in 1983, when the legislature authorized any trial judge to hear in vacation, the same as in term time, any matter pending in his court and triable at the preceding term.[256] The legislature in 1985, seemed to be attempting to abolish terms of court altogether, but rather just left it to the senior judges of the individual districts to determine annually the dates of the terms of court in each district.[257] Those dates are reported by October first to the Secretary of State who disseminates the information to the entire membership of the bar annually.[258]

It is of passing interest to note that with only a few exceptions, the terms established by the judges in 1986 were identical with those stated in the repealed

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247. Act of Apr. 16, 1985, ch. 518, § 11, 1985 Miss. Laws 655, 660-61 (originally codified at MISS. CODE ANN. § 9-5-255 (Supp. 1985)) (current version at MISS. CODE ANN. § 9-5-255 (1991)).

248. Act of Mar. 12, 1989, ch. 378, 1989 Miss. Laws 377 (originally codified at MISS. CODE ANN. § 9-7-18 (Supp. 1989)) (current version at MISS. CODE ANN. § 9-7-18 (1991)).

249. *Id.*

250. Interview with Leonard Vincent, Counsel for Department of Corrections, Parchman, Miss. (Sept. 5, 1991).

251. *Id.*

252. Act of Apr. 22, 1982, ch. 476, § 3, 1982 Miss. Laws 622, 624-25 (originally codified at MISS. CODE ANN. § 9-9-35 (Supp. 1982)) (current version at MISS. CODE ANN. § 9-9-35 (1991)).

253. MISS. CODE ANN. § 9-9-36 (Supp. 1989).

254. MISS. CODE ANN. § 9-7-81 (Supp. 1991).

255. MISS. CODE ANN. § 9-9-21 (Supp. 1991).

256. Act of Mar. 23, 1983, ch. 388, 1983 Miss. Laws 211 (originally codified at MISS. CODE ANN. § 11-1-16 (Supp. 1983)) (current version at MISS. CODE ANN. § 11-1-16 (1991)).

257. MISS. CODE ANN. § 9-5-3 to -57 (1985) (for chancery); MISS. CODE ANN. §§ 9-7-3 to -54 (1985) (for circuit).

258. *See supra* note 257.

statutes.[259] All of this notwithstanding, Judge Billy G. Bridges, chancellor of the Twentieth Chancery Court District said in 1986: "The [implementation of the] Rules of Civil Procedure *and nothing else* has done away with terms."[260] Even though the Judicial Council did not live to see it, their proposal for the abolition of court terms has, in fact, come into being, though without noticeable change.

3. Judicial Qualifications

Though introduced in several sessions from 1970 forward,[261] it was not until 1979, during the operation of the Mississippi Judicial Council, that the legislation was passed proposing an amendment to the Mississippi Constitution which would provide for a commission on judicial performance.[262] The constitutional amendment was adopted by the electorate in the November election of 1979.[263]

The Commission was organized on February 21, 1980[264] with the following membership (including alternates in parentheses):

Members and Alternates	*Appointed By*
Judge Jack B. Weldy – Hattiesburg	Conference of Circuit Judges
(Judge Arthur B. Clark) – Indianola	
Judge Kenneth B. Robertson – Pascagoula	Conference of Chancery Judges
(Judge John Clark Love) – Kosciusko	
Judge Daniel D. Guice – Biloxi	Conference of County Judges
(Judge L. Breland Hilburn) – Jackson	
Judge Mayo Grubbs – Tupelo	Justice Court Officers Association
(Judge A. J. Foretich) – Gulfport	
Dr. Cleopatra D. Thompson – Jackson	Mississippi Judicial Council
(Mrs. Elizabeth C. Powers) – Greenwood	

259. SECRETARY OF STATE, MISSISSIPPI JUDICIARY DIRECTORY AND COURT CALENDAR (Jan. 1986).

260. Telephone Interview with Chancellor Billy G. Bridges, 20th Chancery Court District (July 28, 1986).

261. S. Con. Res. 508, Reg. Sess., 1970 Miss. Senate J. 160; H. Con. Res. 56, Reg. Sess., 1971 Miss. House J. 1238; S. Con. Res. 556, Reg. Sess., 1976 Miss. Senate J. 287; H. Con. Res. 69, Reg. Sess., 1976 Miss. House J. 308; S. Con. Res. 616, Reg. Sess., 1978 Miss. Senate J. 134; S. Con. Res. 538, Reg. Sess., 1979 Miss. Senate J. 119.

262. H. Con. Res. 33, Reg. Sess., Act of Mar. 27, 1979, ch. 520, 1979 Miss. Laws 1141. Implementing legislation is Act of Apr. 18, 1979, ch. 511, 1979 Miss. Laws 1105 (codified at MISS. CODE ANN. §§ 9-19-1 to -29 (Supp. 1979) (amended the next year to make minor changes by Act of Apr. 25, 1980, ch. 385, 1980 Miss. Laws 700)).

263. MISS. CONST. art. 6, § 177A (ed. note supp. 1980).

264. Minutes, MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE (Feb. 21, 1980) (on file in the commission office at Room 102 Burroughs Building, 146 E. Amite Street, Jackson, Miss.) [hereinafter Minutes].

Dr. John K. Bettersworth – Starkville	Mississippi Judicial Council
(Mr. Robert Church) – Oxford	
Hon. Pat H. Scanlon – Jackson	Mississippi State Bar
(Hon. William M. Bost, Jr.) – Vicksburg[265]	

Scanlon was elected by the membership to serve as its first chairman.[266] It was perhaps with a sense of poetic justice that this Commission began the first month of the administration of Governor William Winter, as it had been he who had addressed the need for such an agency a decade before when he wrote his article about judicial discipline.[267]

Jurisdiction of the Commission extends to any conduct which falls within the following grounds for discipline or retirement:

(1) Actual conviction of a felony in a court other than a court of the State of Mississippi;
(2) Willful misconduct in office;
(3) Willful and persistent failure to perform his duties;
(4) Habitual intemperance in the use of alcohol or other drugs;
(5) Conduct prejudicial to the administration of justice which brings the judicial office into disrepute; and
(6) Physical or mental disability seriously interfering with the performance of his duties, which disability is or is likely to become of a permanent character.

In addition, the Commission may consider willful violation of the law constituting a serious misdemeanor or felony and violation of codes of judicial conduct or professional responsibility. Conviction of a felony in state court would result in removal from office pursuant to Section 175 of the Miss. Constitution and Section 25-5-1 of the Miss. Code.[268]

Although questions of advanced age and physical infirmity of trial judges in Mississippi may have been the catalyst which began consideration for such a commission, the bulk of the investigations[269] and cases handled by the Commission and all but three of the cases appealed to the supreme court have involved

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265. MISSISSIPPI COMMISSION FOR JUDICIAL PERFORMANCE, 1980 ANNUAL REPORT 11 (1980).

266. Minutes, *supra* note 264.

267. William F. Winter, *Judging the Judges – The Techniques of Judicial Discipline*, 41 MISS. L.J. 1 (1969).

268. MISSISSIPPI COMMISSION FOR JUDICIAL PERFORMANCE, 1985 ANNUAL REPORT 2-3 (1985).

269. MISSISSIPPI COMMISSION FOR JUDICIAL PERFORMANCE, 1992 ANNUAL REPORT 12 (1992) [hereinafter 1992 ANNUAL REPORT] shows that of 1702 complaints, 1126 were against justice court or municipal judges.

municipal or justice court judges rather than trial court judges.[270] Most of them involved misappropriation of funds.

Of the thirty-two judges whose cases were taken to the supreme court through December 31, 1992, eleven were removed from office, one voluntarily retired, fourteen were publicly reprimanded, two were privately reprimanded, three were suspended, and charges against one were dismissed.[271] One of the removals was a case in which the court issued a fine and reprimand; in another, the court fined and removed the judge.[272]

The Commission on Judicial Performance investigates and makes recommendations, but the supreme court has the final authority to discipline:

> On recommendation of the commission on judicial performance, the supreme court may remove from office, suspend, fine or publicly censure or reprimand any justice or judge of this state . . . and may retire involuntarily any justice or judge for physical or mental disability seriously interfering with the performance of his duties which disability is or is likely to become of a permanent character.
>
> A recommendation of the commission on judicial performance for the censure, removal or retirement of a justice of the supreme court shall be determined by a tribunal of seven (7) judges selected by lot from a list consisting of all the circuit and chancery judges at a public drawing by the secretary of state. The vote of the tribunal to censure, remove or retire a justice of the supreme court shall be by secret ballot and only upon two-thirds (2/3) vote of the tribunal.[273]

In the first thirteen years of the operation of the Commission on Judicial Performance, 1925 complaints have been received or initiated, 1031 have been dismissed without foundation, 441 were matters for appellate review, 303 have been settled without formal complaint,[274] and 140 have gone on to formal hearings.[275] Even though Mississippi was the last state in the union to adopt the concept of

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270. Mississippi Comm'n on Jud. Per. v. Chinn, 611 So. 2d 849 (Miss. 1992); *In re* Maples, 611 So. 2d 211 (Miss. 1992) (circuit judge); Mississippi Jud. Per. Comm'n v. Hopkins, 590 So. 2d 857 (Miss. 1991); *In re* Seal, 585 So. 2d 741 (Miss. 1991); Mississippi Jud. Per. Comm'n v. A Justice Court Judge, 580 So. 2d 1259 (Miss. 1991); Mississippi Jud. Per. Comm'n v. Riley, 572 So. 2d 875 (Miss. 1990); Mississippi Jud. Per. Comm'n v. Cowart, 566 So. 2d 1251 (Miss. 1990); Mississippi Jud. Per. Comm'n v. Walker, 565 So. 2d 1117 (Miss. 1990); Mississippi Jud. Per. Comm'n v. Peyton, 555 So. 2d 1036 (Miss. 1990); *In re* Quick, 553 So. 2d 522 (Miss. 1989); Mississippi Jud. Per. Comm'n v. Coleman, 553 So. 2d 513 (Miss. 1989); Mississippi Jud. Per. Comm'n v. Thomas, 549 So. 2d 962 (Miss. 1989); *In re* Hearn, 542 So. 2d 901 (Miss. 1989); *In re* Bailey, 541 So. 2d 1036 (Miss. 1989); *In re* Baker, 535 So. 2d 47 (Miss. 1988) (chancery judge); *In re* Mullen, 530 So. 2d 175 (Miss. 1988); *In re* Collins, 524 So. 2d 553 (Miss. 1988) (county court judge); *In re* Chambliss, 516 So. 2d 506 (Miss. 1987); *In re* Hearn, 515 So. 2d 1225 (Miss. 1987); *In re* Cooksey, 515 So. 2d 957 (Miss. 1987); *In re* Stewart, 490 So. 2d 882 (Miss. 1986); *In re* Garner, 466 So. 2d 884 (Miss. 1985); *In re* Cadle, 466 So. 2d 79 (Miss. 1985); *In re* Brown, 458 So. 2d 681 (Miss. 1984); *In re* Anderson, 451 So. 2d 232 (Miss. 1984); *In re* Smith, 449 So. 2d 755 (Miss. 1984); *In re* Anderson, 447 So. 2d 1275 (Miss. 1984); *In re* Odom, 444 So. 2d 835 (Miss. 1984); *In re* Lambert, 421 So. 2d 1023 (Miss. 1982); *In re* Branan, 419 So. 2d 145 (Miss. 1982); *In re* Anderson, 412 So. 2d 743 (Miss. 1982).

271. 1992 ANNUAL REPORT, *supra* note 269, at 18-28.

272. *In re* Brown, 458 So. 2d 681 (Miss. 1984).

273. MISS. CONST. art. 6, § 177A.

274. Including private admonishments by the Commission, resignation of the judge during the Commission investigation, or other informal dispositions.

275. 1992 ANNUAL REPORT, *supra* note 269, at 12-14.

judicial discipline, there have definitely been some advantages to the delay. Learning from the mistakes of other states and having several models from which to choose, Mississippi adopted the plan and the rules that best fit the Mississippi system. In so doing, Mississippi has become the model for effective disciplinary groups nationwide.[276]

4. Rule Making

No issue in regard to judicial administration has caused more furor than the supreme court's exercise of its inherent power[277] to make rules for practice in the trial courts.[278] From 1970 through 1975, legislation was introduced, as recommended by the Mississippi Judiciary Commission, to "define the power of the supreme court to prescribe general rules of civil practice and procedure; to establish an advisory committee for the formulation of such rules; to require such rules to be reported to the legislature; and for related purposes."[279] In 1975, the legislature finally adopted the concept,[280] but not without forceful motivation from the supreme court.

Since the legislature had taken no action in regard to this matter, finally, on January 27, 1975, the Mississippi Supreme Court decided the case of *Newell v. State*,[281] changing the court rule in regard to instructions to the jury. Prior to that time, a judge could not initiate instructions to the jury, nor amend instructions presented by the attorneys on either side.[282] He could only mark "given" or "refused" in regard to written instructions requested by counsel.[283] In the *Newell* case, then Presiding Justice Neville Patterson asserted and exercised the inherent power of the supreme court to promulgate rules of practice and procedure.[284] The court brought into clear focus the respective positions of the court and the legislature in rule-making as follows:

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276. Luther T. Brantley, III, Executive Director of the Mississippi Commission on Judicial Performance, Speech to Mississippi College School of Law Ethics class (Apr. 23, 1987).

277. MISS. CONST. art. 6, § 144 (which vests in the state supreme court the "judicial power" of the state).

278. Miss. S. Ct. Order of May 26, 1981, 395-97 So. 2d (Miss. Cases) 1 (Miss. 1981).

279. S. 1764, Reg. Sess., 1970 Miss. Senate J. 157; *see also* H.R. Bill. 18, Reg. Sess., 1973 Miss. House J. 5; S. 1846, Reg. Sess., 1974 Miss. Senate J. 42; S. 2213, Reg. Sess., 1975 Miss. Senate J. 24.

280. S. Bill. 2490, Reg. Sess., Act of Jan. 1, 1975, ch. 501, 1975 Miss. Laws 771 (originally codified at MISS. CODE ANN. §§ 9-3-61 to -73 (Supp. 1975)) (current version at MISS. CODE ANN. §§ 9-3-61 to -73 (1991 & Supp. 1993)).

281. 308 So. 2d 71, 74 (Miss. 1975). The court addressed the magnitude of the problem as follows:

> The record portrays a discrepancy in our state's legal procedure that has literally cost thousands of dollars in new trials, untold expenditure of time, docket congestion and prolonged litigation. It points out the inability of a trial judge to instruct a jury as to the applicable law of a case due to legislative enactment and the decisions of this Court. More importantly, and aside from the practical considerations mentioned, this prohibition has been in the past, and now is, an impediment to the administration of justice that can no longer be indulged in courts of constitutional origin and which should not be tolerated in courts otherwise ordained since all share a common purpose – the fair and efficient administration of justice.

Id.

282. MISS. CODE ANN. § 11-7-155 (1972) (civil cases); § 99-17-35 (1972) (criminal cases).

283. *Id.*

284. *Newell*, 308 So. 2d at 76.

> We are keenly aware of, and measure with great respect, legislative suggestions concerning procedural rules and they will be followed unless determined to be an impediment to justice or an impingement upon the constitution. The inherent power of this Court to promulgate procedural rules emanates from the fundamental constitutional concept of the separation of powers and the vesting of judicial powers in the courts.[285]

After quoting the statute with the unconstitutional language deleted, the court reiterated deference to but superiority over legislatively enacted rules:

> This requires the Court to draw upon its inherent power to prescribe rules of procedure to facilitate the administration of justice in the courts throughout the state. In doing so, we hasten to say that as long as rules of judicial procedure enacted by the legislature coincide with fair and efficient administration of justice, the Court will consider them in a cooperative spirit to further the state's best interest, but when, as here, the decades have evidenced a constitutional impingement, impairing justice, it remains our duty to correct it.[286]

For an orderly transition, the court stated "the implemented rules are prospective and shall become effective not later than sixty (60) days from the publication of this opinion,"[287] which would be near the end of the legislative session.

Thereafter, during the 1975 session, the legislature passed the Rule Making Act of 1975[288] that established an advisory committee on the rules while recognizing that the supreme court could reject the advice and initiate rules on its own motion, but would have available to it the best wisdom of such an advisory committee.

The Advisory Committee was authorized effective July 1, 1975,[289] but because the legislature appropriated no funds until the late spring of 1976, little activity was attempted the first year.[290] The original membership of the Advisory Committee on Rules of Civil Practice and Procedure consisted of:

Supreme Court member:	Honorable Neville Patterson of Monticello

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285. *Id.*

286. *Id.* at 78.

287. *Id.*

288. Act of Apr. 7, 1975, ch. 501, 1975 Miss. Laws 771 (originally codified at MISS. CODE ANN. §§ 9-3-61 to -73 (Supp. 1975)) (current version at MISS. CODE ANN. §§ 9-3-61 to -73 (1991 & Supp. 1993)).

289. *Id.*

290. Telephone Interview with Arlen B. Coyle, Senior staff attorney for the 4th Circuit Court of Appeals, in Richmond, Va. (Feb. 10, 1986) [hereinafter Coyle].

Circuit Court members:	Honorable J. O. Sams, Sr., of Columbus Honorable James D. Hester of Laurel Honorable Lester F. Williamson, Jr., of Meridian
Chancery Court members:	Honorable William H. Bizzell of Cleveland Honorable Bert H. Jones of McComb Honorable Lenore L. Prather of Columbus
County Court members:	Honorable James Nichols of Vicksburg Honorable O. L. McLeod of Pascagoula
Attorney-Members selected by Bar Commissioners:	O. Lunsford Casey, Esquire, of Laurel Lawrence J. Franck, Esquire, of Jackson Everette Truly, Esquire, of Natchez
Attorney-Members selected by supreme court:	Leslie Darden, Esquire, of New Albany Boyce Holleman, Esquire, of Gulfport.[291]

On July 1, 1976, the committee selected University of Mississippi law professor Arlen B. Coyle as its research counsel.[292] Coyle had served as assistant director of the Mississippi Judicial College with N. S. "Soggy" Sweat, Jr., director, for two years before his selection by the court.[293]

The Advisory Committee met monthly thereafter until July, 1977, when it completed its preliminary draft.[294] It was widely distributed within the legal community, and five open hearings were held in July and August 1977.[295] Following extensive revision, "the proposed rules were formally submitted to the . . . Court . . . [to] be implemented . . . ."[296] After the court held a public hearing in January 1979, at which time the Mississippi Trial Lawyers Association (MTLA) voiced objection to the entire work, the Advisory Committee made further revisions.[297]

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291. ADVISORY COMMITTEE ON RULES OF CIVIL PRACTICE AND PROCEDURE, PROPOSED MISSISSIPPI RULES OF CIVIL PROCEDURE III (1978) [hereinafter ADVISORY COMMITTEE].

292. E. Clifton Hodge, *Young Lawyers Section Annotations*, THE MISS. LAW., Nov. 1979, at 5 [hereinafter Hodge].

293. Coyle, *supra* note 290.

294. ADVISORY COMMITTEE, *supra* note 291, at I.

295. ADVISORY COMMITTEE, *supra* note 291, at II.

296. Hodge, *supra* note 292.

297. Hodge, *supra* note 292.

In September 1979, the state supreme court submitted the final draft to the legislature.[298] The next month the House Judiciary En Banc Committee voted twenty-eight to five to disapprove the proposed rules.[299] The Young Lawyers Section of the State Bar determined to meet with the MTLA and resolve the disputes which motivated this opposition.[300]

Again in 1980, the supreme court submitted a draft of the rules to the Judiciary Committees of the House and Senate. This time both the House and the Senate Committees rejected the proposed rules.[301] Also, in the 1981 session, the legislature appropriated no funds for the operation of the Advisory Committee, so that on June 30, 1981, the staff director's office closed, and the committee continued its work on a completely voluntary basis.[302]

However, on May 26, 1981, the supreme court, on its own motion, adopted the Mississippi Rules of Civil Procedure to be followed in practice in circuit, chancery, and county courts.[303] It was not a unanimous ruling.[304] Rather, the court was sharply divided on its activist posture.[305]

In the special session of the legislature that summer of 1981, Senate Concurrent Resolution No. 503[306] was adopted on August 26, "[r]equesting that the Mississippi Supreme Court [r]econsider and [r]escind [i]ts [o]rder [u]nilaterally [a]dopting [r]ules of [c]ivil [p]ractice and [p]rocedure for [a]ll [c]hancery, [c]ircuit and [c]ounty [c]ourts of the [s]tate."[307] The body of the resolution asked that the order be withdrawn so that the legislature and the court, working together during the 1982 session could resolve the issue of whether or not the court could by rule repeal what the legislature had earlier done by statute.[308] The author of the 1982 *Supreme Court Review* made the understatement of the decade when he wrote: "Whether a state supreme court has inherent rule making authority has generated an extensive debate."[309] Subsequently, law professors at Mississippi College School of Law entered the debate with well-reasoned conclusions dealing with a comparison between the Mississippi system and that of the federal government.[310]

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298. Hodge, *supra* note 292. The statute, MISS. CODE ANN. § 9-3-71 (Supp. 1975), provided that the draft must be filed with the Senate and House of Representatives by October 1.

299. Hodge, *supra* note 292, at 7.

300. Hodge, *supra* note 292, at 7.

301. *Supreme Court Orders New Rules for State Courts*, THE MISS. LAW., July-Aug. 1981, at 8.

302. Coyle, *supra* note 290.

303. Miss. S. Ct. Order of May 26, 1981, 395-97 So. 2d (Miss. Cases) 1 (Miss. 1981).

304. For an excellent discussion of the positions of the various members of the court, see R. Nash Neyland, Note, *Supreme Court Review: Civil Procedure*, 52 MISS. L.J. 399, 401-02 (1982).

305. *Id.*

306. Act of Aug. 26, 1981, ch. 18, 1981 Miss. Laws Extraordinary Sess. 23.

307. *Id.*

308. *Id.*

309. Neyland, *supra* note 304, at 402. Because that author handled the issue well through extensive citation of authority, reference will merely be made to it here.

310. William H. Page, *Constitutionalism and Judicial Rulemaking: Lessons from the Crisis in Mississippi*, 3 MISS. C. L. REV. 1 (1982); Paul B. Herbert, *Process, Procedure and Constitutionalism: A Response to Professor Page*, 3 MISS. C. L. REV. 45 (1982); William H. Page, *The Legitimacy of Judicial Rulemaking: A Reply to Professor Herbert*, 3 MISS. C. L. REV. 59 (1982).

The controversy, however, was not limited to academia. Just a week after the opening of the 1982 session and just thirteen days after the new rules went into effect, Senators Charles Pittman and W. L. Rayborn introduced a resolution to call for impeachment of the five supreme court judges who had adopted the new Rules.[311] Though the resolution never came out of the Rules Committee, emotions ran high throughout the session. The legislature passed a bill reasserting the legislative power to veto any supreme-court-promulgated rules.[312]

By order dated March 5, 1982, to be effective May 1, 1982,[313] the supreme court eliminated Rule 14[314] and amended Rule 4.[315] It submitted the rest of the rules to the legislature for "advice and comments" but reserved ruling on the constitutionality of Senate Bill 2714.[316] Thereafter, before ending the 1982 session, the legislature passed Senate Concurrent Resolution 617 which denied approval of Rules 3, 12, 13, 41, 47, 49, 55, 56, and 83.[317]

The written records stop abruptly here without a resolution of the conflict. What happened? There were attempts to effect an amicable settlement, with Senator Martin Smith and then Associate Justice Harry G. Walker appearing to be the acknowledged conciliators.[318] Six years later when asked "what happened," Senator Smith replied, "I can't remember, I think the legislature just gave up."[319] Retired Chief Justice Walker remembered exactly: "The Court just ignored what the legislature had passed and went ahead with the operation of the courts under all the new rules."[320] Court clerk Sue Gordon well remembered those days.[321] She said the legislature's reaction to the insistence by the court of its inherent powers was simply to decrease the court's funds for commodities.[322] "One year we could

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311. S. Con. Res. 523, Reg. Sess., 1982 Miss. Senate J. 101. "A Concurrent Resolution setting a joint assembly to consider the removal from office of certain Supreme Court Justices of Mississippi" introduced Jan. 14, 1982.

312. S. 2714, Reg. Sess., Act of Mar. 3, ch. 321, § 2, 1982 Miss. Laws 116 (originally codified at MISS. CODE ANN. § 9-3-71 (Supp. 1982)) (current version at MISS. CODE ANN. § 9-3-71 (1991)) (It became law without the Governor's approval on March 3, 1982).

313. B-V Mississippi Supreme Court Minute Book 391 (Mar. 5, 1982) (located in the Miss. Supreme Court Clerk's Office).

314. MISS. R. CIV. P. 14 (395-97 So. 2d (Miss. Cases) 54-56 (Miss. 1982)). Rule 14 established third party practice, commonly known as "impleader" practice.

315. Miss. R. Civ. P. 4 (395-97 So. 2d (Miss. Cases) 24-32 (Miss. 1982)). Rule 4 reinstated legislative directions in service of process.

316. B-V Mississippi Supreme Court Minute Book 391 (Mar. 5, 1982) (located in the Miss. Supreme Court Clerk's Office).

317. S. Con. Res. 617, Reg. Sess., Act of Mar. 31, 1982, ch. 675, 1982 Miss. Laws 139.

318. Telephone Interview with Sue Gordon, Clerk of the State Supreme Court and former secretary to Justice Harry G. Walker (July 18, 1988) [hereinafter Gordon]. Eventually, adequate funding was restored as is evidenced by Resolution 1 passed at the 1985 bar convention:

> That the Legislature of the State of Mississippi be commended for responding favorably to the Court's budget request for FY 1985-86, including without limitation, appropriations for Westlaw, increases in clerk's [sic] and legal secretaries' salaries, and the authorization of additional clerks – all of which areas the Task Force found reasonably likely to improve the Court's disposition of cases.

Miss. State Bar Minutes, 80th Annual Business Session, at 96 (June 8, 1985).

319. Telephone Interview with Martin Smith, attorney in Poplarville, Miss. (July 18, 1988).

320. Telephone Interview with Harry G. Walker, retired chief justice, in Gulfport, Miss. (July 21, 1988).

321. Gordon, *supra* note 318.

322. Gordon, *supra* note 318.

buy pocket parts for only two of the nine sets of Am. Jur. 2d. By June, during more than one year in there, pencils and legal pads became really scarce."[323]

Much of the initial objection to the adoption of the new rules was aimed at the discovery procedure.[324] The legislature itself in 1975 adopted the discovery rule just in case the rules of civil procedure as recommended by the advisory committee and promulgated by the supreme court might not contain this all-important practice tool.[325] Now that the attorneys have practiced under the new rules for a number of years, one wonders if the furor in the trial bar engendered by the adoption of the new rules was not really a "tempest in a teapot."[326]

The tempest did not subside, however, between the court and the legislature. For a good discussion of the 1983 constitutional amendment to the supreme court's jurisdiction,[327] the court's adoption of the Mississippi Rules of Evidence in 1986, the legislation in regard to testimony of social workers in child abuse cases and the court's rejection of the legislative rule in *Hall v. State*,[328] see the recent articles on limits of the rule-making power.[329] The court/legislature cooperative spirit seems to have been restored as evidenced by the passage of a bill to amend certain statutes to conform to the court-adopted rules and to repeal all statutes which are superseded by the court's rules or which are in conflict with the court's rules.[330]

5. Judicial Compensation

At the time of its report, the Judiciary Commission recommended a raise of $10,000 for the chief justice, $9850 for the presiding and associate justices, and $8000 for the chancery and circuit judges.[331] Though its recommendation was not adopted as made, a substantial increase was voted for judges' salaries.[332] The legislative members had assistance from what may have been the most prestigious lobby group the Mississippi State Bar had ever utilized. Under the leadership of Boyce Holleman, then President of the Mississippi State Bar, a coalition of all the living past presidents of the bar converged on the legislative halls and on a one-on-

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323. Gordon, *supra* note 318.

324. *Foreword, Symposium on Mississippi Rules of Civil Procedure*, 52 MISS. L.J. 1 (1982).

325. MISS. CODE ANN. §§ 13-1-201 to -243 (1975) (repealed in 1991 and currently found in MISS. R. CIV. P. 26-37).

326. In fact, Chief Justice Neville Patterson in his State of the Judiciary Address to the Mississippi State Bar Convention in 1983 said simply about the Rules of Civil Procedure: "I advise they are now in effect and, from the reports received in my office, are working well." Miss. State Bar Minutes, 78th Annual Meeting General Assembly, at 15 (June 3, 1983).

327. MISS. CONST. art. VI, § 146 (1890, amended 1983).

328. 539 So. 2d 1338 (Miss. 1989).

329. F. Keith Ball, Comment, *The Limits of the Mississippi Supreme Court's Rule-Making Authority*, 60 MISS. L.J. 359 (1990); Ronald C. Morton, Note, *Rules, Rulemaking, and the Ruled: The Mississippi Supreme Court as Self-Proclaimed Ruler*, 12 MISS. C. L. REV. 293 (1991).

330. Act of Apr. 12, 1991, ch. 573, §§ 1-140, 1991 Miss. Laws 979, 979-1014. See also Hall v. State, 539 So. 2d 1338 (Miss. 1989) in which the child abuser was convicted under the court's amended rules of evidence.

331. MISS. JUDICIARY COMM'N, *supra* note 6, at 23.

332. Act of Apr. 3, 1970, ch. 402, § 3, 1970 Miss. Laws 526, 529-31 (originally codified at MISS. CODE ANN. of 1942 § 1608 (Supp. 1972)) (current version at MISS. CODE ANN. § 25-5-3 (1991 & Supp. 1993)).

one basis, as well as by appearance before the Fees and Salaries Committees of the House and Senate, educated the legislators on the dire need of relief in the form of increased compensation for the judges. They convinced a sufficient number of them, but only after a "cliff hanging" experience on the last day of the session.

House Bill 775, the omnibus salary bill which included all elective and appointive offices of the executive branch and all judges above the level of the justice of the peace, originally passed the House of Representatives by a vote of eighty-two for, twenty-eight against, one person present but not voting, and eleven persons absent or not voting.[333] By a vote of thirty-nine for, ten against and three absent, the Senate, on March 27, amended House Bill 775 by striking all after the enacting clause and inserting a new bill with, among other things, higher salaries for the judiciary to conform to the recommendation of the Judiciary Commission.[334] Conference was requested and conferees Finnie, Pearson, and Meek were appointed by the Speaker; and Crook, Wicker, and Horton were appointed from the Senate.[335] On March 30, the conference report was adopted by the Senate with a comfortable margin of forty-four to eight,[336] and by the House with a vote of fifty-seven for, forty-seven against, one present and not voting, and seventeen absent or not voting[337]—a far cry from the initial House vote of eighty-two to twenty-eight! Immediately thereafter the conference report was held on a motion to reconsider.[338]

The record shows that the House adjourned at midnight on March 30 and reconvened at 12:01 a.m. March 31, with opening prayer and roll call.[339] Then Representative Merideth called up the motion to reconsider the vote whereby the conference report was adopted. He then moved to table the motion to reconsider,[340] thereby approving the bill and releasing it for enrollment and signature by the proper officials. However, the motion to table *lost* by a tie vote of fifty-three for, fifty-three against, one present but not voting, and fifteen absent or not voting.[341]

After the motion to table lost, "Representative Merideth called up the motion to reconsider the vote whereby the conference report was adopted on House Bill 775

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333. 1970 Miss. House J. 511.

334. 1970 Miss. Senate J. 1036.

335. 1970 Miss. House J. 973, 991, 1004; 1970 Miss. Senate J. 1067, 1161.

336. 1970 Miss. Senate J. 1204.

337. 1970 Miss. House J. 1078.

338. 1970 Miss. House J. 1079.

339. 1970 Miss. House J. 1087.

340. 1970 Miss. House J. 1088.

341. 1970 Miss. House J. 1088. It should be noted that any action other than approval of the conference committee report would have killed the salary increases for not only the judges but also all of the other state officials, and this was the year before election year. Generally, salary increases are not passed in an election year, so conceivably it could have been 1972 before any salary bill would have been considered again. Also of note is the fact that judicial elections (which in Mississippi are held in "off" years with no other elections but those for congressmen) were being held later in 1970, with the qualifying deadline in April. Many incumbent judges were considering not running if no salary increases were granted and judicial hopefuls were waiting to see what the incumbents were going to do before deciding whether or not to qualify to run for judicial office that year.

and moved that the House reconsider the vote whereby the conference report was adopted."[342] Several judges had spent the afternoon, evening, night, and even wee hours of the morning in the gallery of the House awaiting this vote to know the fate of their salaries. They could see the "floor working" as people from both sides of the vote began to court those who had not voted and reason with those on the other side. The moment was tense as the Speaker called: "Open the machine, Mr. Clerk." The board seemed ablaze with red "no" lights, but when the machine was closed and the vote was tallied, the motion to reconsider lost by a vote of fifty-five for, fifty-five against, one present but not voting, and eleven absent or not voting.[343] The Bill was released as passed. The raises were granted, and the judges in the balcony breathed a sigh of relief, as did this author.

Since that was the last bill on the calendar, immediately, the Chairman of the Rules Committee called up House Concurrent Resolution [hereinafter HCR] Number Two, which fixed the date of *sine die* adjournment and moved to amend to show the date as April 6, 1970, one day past the new ninety day limit.[344] That amendment and the resolution were adopted.[345] At 1:10 a.m. the House adjourned until 2 p.m. the next day,[346] but since the *sine die* resolution always states a day five days thereafter (to avoid difficulty with section 68, Mississippi Constitution of 1890 which prohibits passage of appropriations bills in the last five days of a session), the House of Representatives went home ending the session. Immediately the Senate dissolved into a committee of the whole to consider House passed HCR 2, recommended its adoption, and voted on final passage to adjourn *sine die*

342. 1970 Miss. House J. 1089.
343. *Id.*
344. *Id.*
345. *Id.*
346. *Id.* at 1091.

on April 6, 1970.[347] Subsequent increases in judicial and other salaries have been hard fought,[348] but none quite so dramatically as those in the 1970 session.

The following is a chart showing judicial salaries over the twenty year period from the time of the Judiciary Commission to 1988:

Judicial Salaries Chart (1960-1984)

	1966[1]	1970[2]	1974[3]	1978[4]	1984[5]
Chief Justice	20,000	27,000	35,000	47,000	60,000
Pres. Justice	19,500	26,500	34,500	46,500	59,500
Assoc. Justice	19,000	26,000	34,000	46,000	59,000
Chancery or Circuit	16,000	22,000	30,000	41,000	51,000

347. 1970 Miss. Senate J. 1232.

348. In 1974, H.R. 320 passed the Senate without amendment by a vote of 51 for and 1 against on March 5, 1974, the fifty-seventh day of a 90 day session. 1974 Miss. Senate J. 608. In 1978, H.R. 1526 was introduced on the eighty-seventh day of a 90 day session (under suspension of the rules). 1978 Miss. House J. 1364. On March 31, the eighty-eighth day, the bill was called up as a committee substitute which was rejected, 1978 Miss. House J. 1393, but the original bill with amendment to Section one (only dealing with elective offices in the executive branch) passed by a vote of 68 to 43, with 10 either absent or not voting. *Id.* at 1395. On the same day, the Senate adopted the house bill with 32 for, 8 against, 10 not voting and 1 pair. 1978 Miss. Senate J. 1756. The motion to reconsider was tabled by a vote of 29 for, 14 against, 9 not voting on April 1, the eighty-ninth day of the session. *Id.* at 1773. Perhaps a reason for the declining popularity of this omnibus bill can be seen from the following explanations.

EXPLANATION OF VOTE

I voted for House Bill No. 1526 with reservation. I am very opposed to Section 7 of this Act in view of the power given the Mississippi Classification Commission and the Commission of Budget and Accounting and do not feel this should be done by the Legislature. However, the overall features of the bill are such I must vote for it in view of the need.

I was defeated in trying to correct Section 7.

Jack N. Tucker, Senator
District 9

EXPLANATION OF VOTE

I voted in favor of H.B. No. 1526 because it is the only possible hope for giving the neglected state employees any type of raise, although in my opinion they will in all probability not get any raise other than has already been appropriated. This bill, I'm sorry to say, is an illusion, and should rank in the history of our state as the greatest piece of wool ever pulled over the eyes of any group.

Jim Walters, Senator
Hinds County 22-B

Id. at 1756.

In 1983, the omnibus salary bill began as S. No. 2383, and was passed by the Senate on March 9, the forty-seventh day, by a vote of 95 for, 19 against, and 1 absent. 1983 Miss. House J. 498. The Senate did not concur in House Amendments and the conference committee report was finally adopted by the Senate on April 10, the ninety-seventh day. 1983 Miss. Senate J. 2189, 2200. It was also passed by the House on April 11. 1983 Miss. House J. 999, 1005. Both Houses tabled their motions to reconsider on April 12. The session was extended to be 108 days long.

[1] Chapter 445, Laws of 1966 being § 4175.5, MISS. CODE ANN. Recompiled (1942, Supp. 1966)
[2] Chapter 402, Laws of 1970 being § 4175.5, MISS.CODE ANN. Recompiled (1942, Supp. 1970)
[3] Chapter 351, Laws of 1974 being § 25-3-35, MISS. CODE ANN. (1972, Supp. 1974)
[4] § 4, Chapter 520, Laws of 1978 being § 25-3-35, MISS. CODE ANN. (1972, Supp. 1978)
[5] § 3, Chapter 536, Laws of 1983 being § 25-3-35, MISS. CODE ANN. (1972, Supp. 1983)

Joseph R. Meadows, 1987-88 President of the Mississippi State Bar, said that a raise in compensation for the judges was a high priority in his proposed accomplishments for the State Bar during his administration.[349] That goal was accomplished when the 1988 Legislature voted incremental raises for judges so that their salaries became as follows:

	July/1988	*July/1989*
Chief Justice	$72,000	77,000
Presiding Justices	$71,400	76,400
Associate Justices	$70,800	75,800
Chancery & Circuit Judges	$61,200	66,200[350]

This was accomplished by a massive campaign at the grassroots level by the bar, including articles in *The Mississippi Lawyer* and the hiring of a lobbyist.[351] Even though the judiciary has received what appeared to be substantial increases from time to time, it should be noted that in 1987, there were only five states with judicial salaries lower than those of Mississippi's trial judges and eight states with salaries lower than those of our supreme court justices.[352]

In the 1992 mid-year meeting of the Mississippi Bar, Dean J. Richard Hurt of the Mississippi College School of Law pointed out that under the new American Bar Association Guidelines, individual compensation of judges includes not only salaries commensurate with others in the legal profession, but also fringe benefits,

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349. Miss. State Bar Minutes, 82nd Annual Meeting, Annual Business Sess., at 57 (June 6, 1987).

350. Act of May 19, 1988, ch. 528, 1988 Miss. Laws 695 (originally codified at §§ 9-1-36, 25-3-31, -33, -35, -71 (Supp. 1988)) (currently published at MISS. CODE ANN. §§ 9-1-36, 25-3-31, -33, -35, -71 (1991 & Supp. 1993)). To help eliminate the necessity for such quantum leaps, the Act requires the State Personnel Board to report annually to the legislature on December 1 its recommendations for salary increases of officers whose salaries are set by statute. *Id.* § 5.

351. Scott Levanway, *Judicial Pay Crisis*, THE MISS. LAW., Nov.-Dec. 1987, at 18; Joseph R. Meadows, *President's Message*, THE MISS. LAW., July-Aug. 1987, at 7.

352. THE COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES 172-73 (1986-87 ed.) (*Compensation of Judges Appellate Courts and General Trial Courts* tbl. 4.6).

retirement, incentives for seeking higher judicial office, professional development opportunities, and adequate support staff and facilities.[353]

B. Administration of Criminal Justice

1. District Attorneys

The recommendation that all district attorneys be full-time was accomplished by the terms beginning in 1980.[354] History indicates that the philosophical principle probably would not have been embraced had not the change been brought about by financial reality. From 1954 through 1959, a district attorney made a flat $6000 annual salary.[355] When a salary raise was given in 1960 to $7500, the legislature inserted the following language to encourage a district attorney to become full-time:

> [P]rovided, however, if any such district attorney shall signify in writing to the Auditor of Public Accounts of the State of Mississippi on or before the first day of July of each year that he intends to devote his entire time to the duties of his office, then in such event his salary shall be ten thousand dollars ($10,000.00) per year. It shall not be lawful for any district attorney to exercise the profession or employment of an attorney or counselor at law, or to be engaged in the practice of law; and any person offending against this prohibition shall be guilty of a high misdemeanor and be removed from office. In the event any district attorney notifies in writing the auditor of public accounts his intention to devote his entire time to the duties of his office, then in such event, a copy of such notice shall be given to the circuit judge of such district.[356]

In 1966, the salary of full-time district attorneys was raised to $13,500 and of part-time district attorneys by only $1000 to $8500.[357] In 1970, the gap was widened even more as the salaries were increased to $20,000 for full-time[358] and $10,000 for part-time.[359] In 1974, the salary of full-time district attorneys[360] was

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353. J. Richard Hurt, *Judicial Compensation*, THE MISS. LAW., Apr.-May 1992, at 28.

354. Act of Apr. 11, 1977, ch. 453, § 7, 1977 Miss. Laws 804, 808 (originally codified at MISS. CODE ANN. § 25-31-35 (Supp. 1977)) (current version at MISS. CODE ANN. § 25-31-35 (1991 & Supp. 1993)).

355. Act of May 3, 1954, ch. 253, 1954 Miss. Laws 278 (originally codified at MISS. CODE ANN. of 1942 § 4175 (Supp. 1972)) (current version at MISS. CODE ANN. § 25-3-31 (1991 & Supp. 1993)).

356. Act of May 11, 1960, ch. 324, 1960 Miss. Laws 478 (originally codified at MISS. CODE ANN. of 1942 § 4175 (Supp. 1972)) (current version at MISS. CODE ANN. § 25-3-31 (1991 & Supp. 1993)).

357. Act of June 17, 1966, ch. 445, § 1, 1966 Miss. Laws 819, 820-22 (originally codified at MISS. CODE ANN. of 1942 § 4175 (Supp. 1972)) (current version at MISS. CODE ANN. §25-3-31 (Supp. 1993)).

358. Circuit court judges were increased to $22,000.

359. Act of Apr. 3, 1970, ch. 402, § 1, 1970 Miss. Laws 526, 526-27 (originally codified at MISS. CODE ANN. of 1942 § 4175 (Supp. 1972)) (current version at MISS. CODE ANN. § 25-3-31 (1991 & Supp. 1993)).

360. Act of Apr. 12, 1974, ch. 545, 1974 Miss. Laws 752 (originally codified at MISS. CODE ANN. § 25-3-31 (Supp. 1974)) (current version at MISS. CODE ANN. § 25-3-31 (Supp. 1993)).

increased to $25,000[361] with part-time district attorneys being increased to $12,500 only.[362]

In 1977, by general law with local and private application, Hinds County was authorized to supplement statutory salaries of a full-time district attorney by $4500 a year, each full-time assistant by $3000 a year, and each part-time assistant by $2500 a year.[363] Also, Harrison County was authorized to supplement its full-time district attorney by $4500 per year and each full-time assistant by $5000 per year.[364] That same act set out the number of legal assistants each district attorney could have with the provision that the offices of legal assistants where the district attorney was not full-time were terminated except for (1) the Sixteenth District, where the assistant would be terminated from and after January 1, 1980, if the district attorney then were not full-time and (2) the Tenth District where the assistant would be terminated on January 1, 1980.[365] Then, after dealing with office expenses and investigators,[366] the law repealed the section dealing with legal assistants, as of July 1, 1978.[367]

The truly significant portion of this act is that part which deletes from section 25-3-31 of the Mississippi Code any reference to part-time district attorneys, thereby requiring all district attorneys on January 1, 1980, the effective date of this section, to be full-time.[368] This law, passed two years before the next election for state officers, gave each part-time district attorney ample time to make his decision between private practice and full time prosecution. In 1978, a new statute[369] stated categorically: "From and After January 1, 1980, there shall be no part-time district attorneys or part-time legal assistants to district attorneys."[370] To help "sweeten the pot," the legislature that year deleted the salary of the district attorney from the omnibus list of state elected officials and raised full-time district attorneys' salaries to "$30,000 a year or an amount equal to ninety percent (90%) of the annual salary of a judge of the circuit court, whichever is greater."[371] It

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361. Act of Mar. 14, 1974, ch. 351, 1974 Miss. Laws 402 (originally codified at MISS. CODE ANN. § 25-3-35 (Supp. 1974)) (current version at MISS. CODE ANN. § 25-3-35 (1991 & Supp. 1993)). Circuit court judges were increased to $30,000.

362. Act of Apr. 12, 1974, ch. 545, 1974 Miss. Laws 752 (originally codified at MISS. CODE ANN. § 25-3-31 (Supp. 1974)) (current version at MISS. CODE ANN. § 25-3-31 (1991 & Supp. 1993)).

363. Act of Apr. 11, 1977, ch. 453, §§ 1-5, 1974 Miss. Laws 804, 804-08 (originally codified at MISS. CODE ANN. §§ 25-31-5, -8, -10, -33 (Supp. 1974)) (current version at MISS. CODE ANN. §§ 25-31-5, -8, -10, -33 (1991 & Supp. 1993)).

364. *Id.*

365. *Id.* § 2.

366. *Id.* §§ 3-4.

367. *Id.* § 5. It contained provisions for actions on January 1, 1980.

368. *Id.* § 6.

369. Act of June 1, 1978, ch. 509, § 10, 1978 Miss. Laws 978, 987 (originally codified at MISS CODE ANN. § 25-31-39 (Supp. 1978)) (current version at MISS. CODE ANN. § 25-31-39 (1991 & Supp. 1993)).

370. *Id.*

371. Act of June 1, 1978, ch. 520, §§ 1-2, 1978 Miss. Laws 1045, 1046 (originally codified at MISS. CODE ANN. § 25-3-32 (Supp. 1978)) (current version at MISS. CODE ANN. § 25-3-32 (1991)).

should be noted that circuit judges' salaries were raised to $41,000 in 1978,[372] making a full-time district attorney's salary $36,900 on July 1, 1978, an $11,900 increase over the 1974 figure. As of January 1, 1984,[373] the judge's salary was raised to $51,000, gratuitously making a district attorney's salary $45,900. Beginning July 1, 1988, the district attorney's salary was $55,080 and on July 1, 1989, it advanced to $59,580.

Funding for the district attorney's office also has progressed.[374] In 1970, the counties in the district, in the discretion of their boards of supervisors, could reimburse the district attorney up to $6000 per year for office expenses, with $7200 per year in Hinds County's District.[375] In 1972, the amount was raised to $8000 a year for part-time district attorney's office expenses and $12,000 for full-time office expenses.[376]

The big breakthrough in office expenses came in 1978 when these offices began to be funded by state appropriation.[377] The limit remained $12,000, but in those counties with two county seats, if the district attorney maintained two full-time offices, an additional allowance of $12,000 was granted.[378] Also, in a district having a county in excess of 200,000 population, in 1970 the board of supervisors could contribute an additional sum of $19,000 to supplement the office expenses of the district attorney (Hinds County).[379] However, this whole section was automatically repealed on July 1, 1981.

Section 9 of that act, which was to take effect on January 1, 1980, provided:

> The several district attorneys shall submit reports of revenues and expenditures and shall submit budget requests as required for State General Fund agencies. For purposes of budget control, the several offices of district attorney shall be considered General Fund agencies and the budget and accounts of the several offices, including salaries, travel expenses, offices expenses and any other expenditures or revenues, shall be consolidated for all districts as far as such consolidation is practical.

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372. Act of June 1, 1978, ch. 520, § 4, 1978 Miss. Laws 1045, 1050 (originally codified at MISS. CODE ANN. § 25-3-35 (Supp. 1978)) (current version at MISS. CODE ANN. § 25-3-35 (1991 & Supp. 1993)).

373. Act of Jan. 1, 1984, ch. 536, § 3, 1983 Miss. Laws 725, 727 (originally codified at MISS. CODE ANN. § 25-3-35 (Supp. 1984)) (current version at MISS. CODE ANN. § 25-3-35 (1991 & Supp. 1993)).

374. Act of May 15, 1972, ch. 497, §§ 2-3, 1972 Miss. Laws 723, 724 (originally codified at MISS. CODE ANN. § 25-31-7 (1972)) (repealed 1972); Act of June 1, 1978, ch. 509, § 6, 1978 Miss. Laws 978, 983 (codified at MISS. CODE ANN. § 25-31-7 (Supp. 1978)) (repealed by implication 1979); Act of Apr. 18, 1979, ch. 490, § 1, 1979 Miss. Laws 1009, 1009 (originally codified at MISS. CODE ANN. § 25-31-8 (Supp. 1979)) (current version at MISS. CODE ANN. § 25-31-8 (1991 & Supp. 1993)); Act of June 1, 1981, ch. 525, 1981 Miss. Laws 1580 ($16,000 + 3500 for each ass't) (originally codified at MISS. CODE ANN. § 25-31-8 (Supp. 1981)) (current version at MISS. CODE ANN. § 25-31-8 (1991 & Supp. 1993)); Act of May 15, 1984, ch. 488, § 175, 1984 Miss. Laws 460, 539 (originally codified at MISS. CODE ANN. § 25-31-11 (Supp. 1984)) (current version at MISS. CODE ANN. § 25-31-11 (1991)).

375. MISS. JUDICIARY COMM'N, *supra* note 6, at 26 (citing MISS. CODE ANN. § 3920.5 (1942 & Supp. 1969)).

376. Act of May 15, 1972, ch. 497, § 4(b), 1972 Miss. Laws 723, 724 (originally codified at MISS. CODE ANN. § 25-31-8 (1972)) (current version at MISS. CODE ANN. § 25-31-8 (1991 & Supp. 1993)).

377. Act of June 1, 1978, ch. 509, § 7, 1978 Miss. Laws 978, 984 (amending MISS. CODE ANN. § 25-31-8 (Supp. 1978)).

378. *Id.*

379. *Id.*

> All revenue or funds allocated or expended by a district attorney, whether such funds are appropriated from state funds, or whether such funds are received from county funds, grants or otherwise, shall be reported to the Commission of Budget and Accounting.[380]

In 1979, the $12,000 office expense was amended by adding $3500 more for the expenses of each assistant.[381] It was to take effect January 1, 1980.[382] Then in 1981, the basic allowance was raised to $16,000 with the $3500 supplement authorized in 1979.[383] Although that statute has not been amended, other funds may be made available by the county[384] and other funding sources, but still must be reported to the legislative budget office.[385]

Concerning support personnel for the full-time district attorneys, the law authorizing legal assistants had been dealt with by the legislature at least ten times[386] since the Commission's report, but still contained an automatic repealer for July 1, 1987.[387] That automatic repealer was deleted in 1985.[388] In 1987, the legislature amended that section to add an additional assistant.[389] In 1988, the legislature gave one assistant to the Eighteenth District, the only one theretofore having none, and one additional assistant to the Tenth, Eleventh and Seventeenth Districts.[390] Then authority was given for an additional assistant in the other sixteen districts if sufficient appropriations were made by the legislature or by order of the Board of Supervisors of one or more counties in the district to fund that assistant completely.[391] This included expenses and fringe benefits as well as salaries.[392] After

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380. *Id.* § 9.

381. Act of Apr. 18, 1979, ch. 490, 1979 Miss. Laws 1009 (originally codified at MISS. CODE ANN. §§ 25-31-8, -11 (Supp. 1979)) (current version at MISS. CODE ANN. §§ 25-31-8, -1 (Supp. 1993)).

382. *Id.*

383. Act of June 1, 1981, ch. 522, 1981 Miss. Laws 1553 (originally codified at MISS. CODE ANN. §§ 25-31-8, -10 (Supp. 1978)) (current version at MISS. CODE ANN. §§ 25-31-8, -10 (Supp. 1993)).

384. Miss. Op. Att'y Gen. (May 24, 1984). This opinion to William A. Austin, Attorney for DeSoto Co. Board of Supervisors, amended an opinion to J. Max Kilpatrick dated November 29, 1979, and any other inconsistent prior opinions. *Id.*

385. MISS. CODE ANN. § 25-31-11 (Supp. 1988).

386. Act of May 15, 1972, ch. 497, § 1, 1972 Miss. Laws 723, 723, *amended by* Act of Apr. 16, 1973, ch. 494, § 1, 1973 Miss. Laws 674, 674, *amended by* Act of Apr. 12, 1974, ch. 544, § 1, 1974 Miss. Laws 751, 751, *amended by* Act of Apr. 8, 1975, ch. 506, 1975 Miss. Laws 802, *amended by* Act of May 25, 1976, ch. 468, 1976 Miss. Laws 756, *amended by* Act of Apr. 11, 1977, ch. 453, §§ 2, 5, 1977 Miss. Laws 804, 805, 808, *amended by* Act of June 1, 1978, ch. 509, § 5, 1978 Miss. Laws 978, 980, *amended by* Act of Apr. 23, 1982, ch. 492, 1982 Miss. Laws 723, *amended by* Act of June 27, 1984, ch. 7, 1984 Miss. Laws 1st Extraordinary Sess. 7, *amended by* Act of Apr. 11, 1985, ch. 502, § 58, 1985 Miss. Laws 557, 577 (originally codified at MISS. CODE ANN. § 25-31-5 (Supp. 1986)) (current version at MISS. CODE ANN. § 25-31-5 (Supp. 1993)).

387. *See supra* note 367.

388. Act of Apr. 11, 1985, ch. 502, § 59, 1985 Miss. Laws 557, 578; *see* MISS. CODE ANN. § 25-31-5 editor's note (Supp. 1987).

389. Act of Apr. 13, 1987, ch. 458, 1987 Miss. Laws 358 (originally codified at MISS. CODE ANN. § 25-31-5 (Supp. 1987)) (current version at MISS. CODE ANN. § 25-31-5 (Supp. 1993)).

390. Act of May 21, 1988, ch. 552, 1988 Miss. Laws 761 (originally codified at MISS. CODE ANN. § 25-31-5(1) (Supp. 1988)) (current version at MISS. CODE ANN. § 25-31-5(1) (Supp. 1993)).

391. Act of May 21, 1988, ch. 552, 1988 Miss. Laws 761 (originally codified at MISS. CODE ANN. § 25-31-5(2), (3) (Supp. 1988)) (current version at MISS. CODE ANN. § 25-31-5(2), (3) (Supp. 1993)).

392. *Id.*

having finally gotten state funding for operation of the district attorney's office, the legislature is now providing for local expenditures as well.[393]

The salary of an assistant is not less than $15,000 nor more than eighty-five percent of the district attorney's salary calculated by years of continuous service in the office.[394] With the 1988 raises for judges, an assistant district attorney may make a maximum of $50,643 on July 1, 1989.

In 1974, when Law Enforcement Assistance funds were still available, the legislature authorized full-time district attorneys to employ full-time criminal investigators.[395] Though various provisions for longevity pay were enacted,[396] the law was amended in 1981 and capped the investigator's salary at $18,000.[397] The 1988 Legislature capped that salary at $23,000.[398] The district attorney was authorized to hire a "victim assistance coordinator" in a 1987 act with a three year automatic repealer[399] which was extended for three more years in 1990.[400] The salary is the same as that for an investigator.[401]

The Commission's recommendations prohibiting a district attorney from being a member of a law firm or sharing office space with any other lawyer other than an assistant district attorney and requiring cooperation from the county attorney became moot by virtue of the 1978 act which did several things other than abolish part-time status for district attorneys and their assistants.[402] It delineated clearly the duties of the county attorney and the district attorney;[403] it authorized the hiring of an attorney in the county to do the work of an elected county attorney where none existed, thereby relieving the district attorneys from county attorney duties.[404] It mandated a district attorney to handle appeals perfected after January 1,

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393. George Warner, Jr., then District Attorney from Meridian, Miss., testified in 1969 that the grand jury reported that the vault in which the land records were kept had to be fire-proofed by the Board of Supervisors, and to do it the Board of Supervisors had withdrawn expense money they usually paid for operation of his office. He strongly advocated that the office of the District Attorney not be dependent on the Board of Supervisors for any finding, to prevent financial pressure from the Board. However, the legislature may have just given statutory assent to the Attorney General's policy. Miss. Op. Att'y Gen. (May 24, 1984) (to William A. Austin, Attorney for DeSoto Co. Board of Supervisors).

394. MISS. CODE ANN. § 25-31-5(4) (Supp. 1988).

395. Act of Apr. 5, 1974, ch. 536, 1974 Miss. Laws 728 (originally codified at MISS. CODE ANN. § 25-31-10 (Supp. 1974)) (current version at MISS. CODE ANN. § 25-31-10 (Supp. 1993)).

396. MISS. CODE ANN. § 25-31-10 (Supp. 1986).

397. Act of June 1, 1978, ch. 522, § 2, 1981 Miss. Laws 1553, 1554 (originally codified at MISS. CODE ANN. § 25-31-10 (Supp. 1978)) (current version at MISS. CODE ANN. § 25-31-10 (Supp. 1986)).

398. Act of May 21, 1988, ch. 522, 1988 Miss. Laws 761 (originally codified at MISS. CODE ANN. § 25-31-10 (Supp. 1988)) (current version at MISS. CODE ANN. § 25-31-10 (Supp. 1993)).

399. Act of Apr. 14, 1987, ch. 467, 1987 Miss. Laws 385 (originally codified at MISS CODE ANN. § 99-36-7 (Supp. 1987)) (current version at MISS. CODE ANN. § 99-36-7 (Supp. 1993)).

400. Act of Mar. 27, 1990, ch. 486, 1990 Miss. Laws 389 (originally codified at MISS. CODE ANN. §§ 99-36-1 to -7 (Supp. 1990)) (current version at MISS. CODE ANN. §§ 99-36-1 to -7 (Supp. 1993)).

401. MISS. CODE ANN. § 99-36-7 (Supp. 1990).

402. Act of June 1, 1978, ch. 509, §§ 1-4, 9, 1978 Miss. Laws 978, 978-79, 986 (codified at MISS. CODE ANN. §§ 9-9-31, 11-45-15, 19-23-11, 25-31-11 (Supp. 1978)) (current version at MISS. CODE ANN. §§ 9-9-31 (1991), 11-45-15 (Supp. 1993), 19-23-11 (Supp. 1993), 25-31-11 (Supp. 1993)).

403. *Id.* §§ 1-3, 9.

404. Act of Apr. 21, 1978, ch. 509, § 4, 1978 Miss. Laws 978, 980 (originally codified at MISS. CODE ANN. § 19-3-49 (Supp. 1978)) (current version at MISS. CODE ANN. § 19-3-49 (Supp. 1993)).

1980, from his district to the state supreme court, thereby relieving the attorney general of having to defend actions of the individual district attorneys;[405] and most importantly, it designated, for budget purposes, the offices of the district attorneys as general fund agencies of the state from January 1, 1980, forward so that state appropriations, county contributions, or other grants would be consolidated for general funding of the office.[406]

The next year, 1979, before those provisions took effect, the legislature ameliorated its position somewhat: (1) when it changed the language to require that the district attorney or county attorney or their designated assistants "*assist the Attorney General* in appeals from his district to the Mississippi Supreme Court *and in other post judgment proceedings, and shall appear for oral argument before the Supreme Court when directed by the Supreme Court*,"[407] and (2) when it granted district attorneys six months to complete their private civil practice after taking office by appointment or election.[408] Further accommodation was made in 1983 providing that a person, not serving as a legal assistant who is appointed to fill a vacancy until an election is had, will be allowed to engage in private practice of law while holding the appointment.[409]

Perhaps one of the reasons for such complete and well planned reforms in the district attorney's area was the operation of a state prosecutors' association that cooperated closely with the National Association of Prosecuting Attorneys [hereinafter NAPA].[410] Albert Necaise was instrumental in the development of the national standards for prosecution endorsed by the NDAA. In fact, his Gulf Coast district attorney's office was designated as the model office for implementation of those standards in 1976.[411]

2. Grand Juries and Information

The Judiciary Commission identified two constitutional requirements in regard to criminal justice that resulted in difficulty for the accused prior to indictment: (1) The grand jury could be drawn only "for each term of circuit court"[412] and therefore, could not serve in vacation and (2) No accused person could waive indictment except in very limited classes of circumstances.[413]

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405. Act of Apr. 21, 1978, ch. 509, § 9, 1978 Miss. Laws 978, 986 (originally codified at MISS. CODE ANN. § 25-31-11 (Supp. 1978)) (current version at MISS. CODE ANN. § 25-31-11 (1991)).

406. *Id.*

407. Act of Apr. 18, 1979, ch. 490, § 2, 1979 Miss. Laws 1009, 1110 (originally codified at MISS. CODE ANN. § 25-31-11(6) (Supp. 1979)) (emphasis added) (current version at MISS. CODE ANN. § 25-31-11 (1991)).

408. Act of Apr. 18, 1979, ch. 490, § 3, 1979 Miss. Laws 1009, 1011 (codified at MISS. CODE ANN. § 25-31-36 (Supp. 1979)).

409. Act of Mar. 4, 1983, ch. 322, § 2, 1983 Miss. Laws 64, 64 (codified at MISS. CODE ANN. § 25-31-36(2) (Supp. 1983)).

410. Telephone Interview with Albert Necaise, Assistant District Attorney (1966-1972) and then District Attorney in Gulfport (1972-1984) (July 21, 1988).

411. *Necaise Office Chosen as Attorney Model*, THE MISS. LAW., Nov. 1976, at 7.

412. MISS. CONST. art. 14, § 264.

413. MISS. CONST. art. 3, § 27.

The problem was particularly acute when the defendant was poor and could not make bail. He could not plead guilty because he had not been indicted, and he could not be indicted for as long as six months since the circuit court was only required to impanel a grand jury twice in any calendar year.[414] Any indictment returned by the grand jury after its term had expired was void.[415] Although the Commission believed the solution lay in allowing the grand jury to meet between terms, no consensus developed.[416] One group feared that reconvening a grand jury after the term, when the names of the grand jurors were public, would make the grand jurors vulnerable to harassment or undue influence attempts.[417] Others felt a grand jury should be impaneled two weeks before the term so that indictments would be complete, arraignments would be made on the first day of the term, and criminal cases, which have priority over other cases, could be tried the first week in the term.[418] Some felt there might be constitutional rights placed in jeopardy in such a procedure.[419] Still others felt it was important to have all persons chosen simultaneously so that no one, including the jurors, would know who would be on the grand jury as opposed to the petit juries.[420]

In 1972, the legislature addressed this issue by proposing an amendment to section 264 of the Constitution of 1890 which deleted the words "for each term of circuit court" following a mandate for procuring lists of qualified grand and petit jurors.[421] The amendment then added this language: "After Feb. 1, 1973, grand jurors may serve both in term time and vacation, and any circuit judge may impanel a grand jury in term time or in vacation."[422] This amendment was ratified by the electorate in November, 1972.[423]

Several cases arose because of motions to quash indictments due to questions involving the reconvening of grand juries subsequent to the end of the terms for which they were impaneled. In the first of these cases, the court stated: "The primary purpose in amending Section 264 was to allow a grand jury to remain impaneled until the next term of criminal court."[424] Therefore, the Mississippi Supreme Court threw out the appellant's contention that the grand jury impaneled at the July

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414. MISS. CODE ANN. § 775 (1942) (current version at MISS. CODE ANN. § 13-5-39 (1972)).

415. Even though several cases upheld the validity of indictments made after the grand jury had been discharged and then reconvened, in every case prior to 1970 the grand jury had been recalled *during the court term* for which it was impaneled. *See* Earnest v. State, 115 So. 2d 295 (Miss. 1959); Kyzar v. State, 87 So. 415 (Miss. 1921); Bell v. State, 79 So. 85 (Miss. 1918); Haynes v. State, 47 So. 522 (Miss. 1908). In *Haynes* the court said that, "Every order and judgment of the court is in the bosom of the court *during the term*, and subject to such change as necessity may require." *Haynes*, 47 So. at 522 (emphasis added).

416. MISS. JUDICIARY COMM'N, *supra* note 6, at 67.

417. MISS. JUDICIARY COMM'N, *supra* note 6, at 67.

418. MISS. JUDICIARY COMM'N, *supra* note 6, at 67.

419. MISS. JUDICIARY COMM'N, *supra* note 6, at 67.

420. MISS. JUDICIARY COMM'N, *supra* note 6, at 68.

421. Act of Apr. 28, 1972, ch. 538, 1972 Miss. Laws 901 (codified at MISS. CONST. of 1890, § 264 (1972)).

422. *Id.*

423. *Id.*

424. Joyce v. State, 327 So. 2d 255, 258 (Miss. 1976).

1974 term died at the end of the term.[425] Failing in that, appellant contended that the July 1974 grand jury expired upon the beginning of the August 1974 term and could not bring an indictment in September 1974.[426] The court dispensed with that argument by saying that the statute expressly stated that the August term was " 'for civil business exclusively.' "[427] It found that the next term at which criminal matters could be heard, and thereby a new grand jury could be impaneled, was October 14, 1974, therefore validating the existence of the July grand jury in September.[428]

The next month the court handed down *Tubby v. State*,[429] which held what at first blush might seem to be a contradiction of *Joyce*, that action of the former grand jury is void because the persons bringing the indictment "were no longer authorized to act as grand jurors."[430] The distinction here is that the same grand jury for September 1973 had been recalled for both the February 1974 and September 1974 terms of circuit court.[431] The court held:

> The second assignment of error wherein the appellant contended during the trial, and now contends here, that the indictment is void, is well taken. A grand jury may be impanelled at a regular term of court, and it may be recalled at any time *before the next criminal term of court* in term time or in vacation, but *when a new criminal court is convened, a new grand jury must be impaneled.* The old grand jury may, however, report indictments obtained in vacation when it makes its final report for final discharge, but, the old grand jury cannot hear evidence and obtain indictments at the second term of the criminal court.[432]

The next month, *Ingram v. State*[433] dealt with the definition of "criminal term" which is the only intervening term that would invalidate a grand jury's power. In that case the grand jury impaneled at the April 1974 term reconvened on September 23, 1974, and brought out the indictment of Ingram after the opening and closing of the intervening July term.[434] The court found a distinction from *Tubby* by examining the express wording of the statutes setting forth the terms of court in the respective counties.[435]

In *Joyce*, under section 9-7-53 there were terms in January, May, July, August, and October, but following the listing of the days of the terms in May and August were the words: " '[F]or civil business exclusively.' "[436] On that basis their

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425. *Id.*
426. *Id.*
427. *Id.* (quoting MISS. CODE ANN. § 9-7-53 (1972)).
428. *Id.*
429. 327 So. 2d 272 (Miss. 1976).
430. *Id.* at 276.
431. *Id.* at 275.
432. *Id.* (emphasis added).
433. 330 So. 2d 602 (Miss. 1976).
434. *Id.* at 603.
435. *Id.* at 604.
436. *Id.* at 603 (quoting MISS. CODE ANN. § 9-7-53 (1972)).

intervention had not affected the grand jury's status.[437] Similarly in *Tubby*, under section 9-7-27 in 1973, and as amended in 1974, the terms were listed with some terms stated "for civil business exclusively."[438] However, in *Ingram*, under section 9-7-49, the language was that at April and October terms "a grand jury shall be impaneled" and January and July terms "at which terms no grand jury shall be drawn or impaneled except by order of the judge."[439] Given that language, the court held since impaneling grand juries was discretionary in the intervening July term and none was called, the recalling of the April grand jury in September was authorized.[440]

> Since the statute under consideration is different from those considered in *Joyce* and *Tubby*, and since these cases used, without explanation, the words "criminal term" to designate the term at which a grand jury should be drawn and impaneled, it is necessary to define "criminal term" to avoid confusion. "Criminal term" as used in *Joyce* and *Tubby* means any term of circuit court fixed by statute unless (1) the statute limits the term to civil business only, or unless (2) the statute specifically gives the circuit judge discretion in the matter of impaneling a grand jury, and none is impaneled. Both civil and criminal cases may be tried at any term unless one class of cases is prohibited by the statute fixing the term.[441]

The next month, the court in *Mapp v. State*[442] held void an indictment returned by a grand jury impaneled at the July term, but not returned until after the November term, which was not stated to be for civil business exclusively, had intervened.[443] Under section 9-7-47 which governed Jones County Circuit Court terms, there were no qualifying phrases in regard to any of the terms, so each was *eligible* to be a "criminal term."[444] Therefore, no grand jury then could serve beyond the beginning of the next term.

Seeking to remedy the problem, in 1983 the legislature passed a bill amending section 13-5-39[445] with the stated purpose:

> [T]o provide that not more than 2 grand juries shall be drawn or impaneled during a calendar year for a term or terms of circuit court in any county or judicial district and to provide that a grand jury shall continue to serve from term to term until the next grand jury is impaneled; . . . [and] to delete all the provisions which authorize, restrict or prohibit the impanelment of grand juries or the conducting of civil or criminal business at certain terms of court in various circuit court districts.[446]

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437. *Id.*

438. *Id.* at 603-04 (quoting MISS. CODE ANN. § 9-7-27 (1972)).

439. *Id.* at 604 n.2 (quoting MISS. CODE ANN. § 9-7-49 (1975)).

440. *Id.* at 604-05.

441. *Id.*

442. 330 So. 2d 881 (Miss. 1976).

443. *Id.*

444. *Id.*

445. From 1910 forward it had read: "Unless otherwise directed by the circuit judges, no grand jurors shall be impaneled for more than two terms of the circuit court in each year." MISS. CODE ANN. § 13-5-39 (1972).

446. Act of Apr. 12, 1983, ch. 499, 1983 Miss. Laws 617 (originally codified at MISS. CODE ANN. § 13-5-39 (Supp. 1983)) (current version at MISS. CODE ANN. § 13-5-39 (Supp. 1993)).

The next year section 13-5-39 was amended again,[447] but only to allow the senior circuit judge to direct impaneling of more than two grand juries. Therefore the present law in regard to grand juries is unmistakable:

> Unless otherwise directed by an order of the senior circuit judge, not more than two (2) grand juries shall be drawn or impaneled during a calendar year at or for a term or terms of the circuit court in any county or judicial district of a county; provided, however, upon impanelment, a grand jury may be convened and reconvened in termtime and in vacation. It shall continue to serve from term to term until the next grand jury is impaneled, and it may return indictments to any term of court, notwithstanding that a term of court at which criminal business may be conducted shall intervene between the time the grand jury is impaneled and the time an indictment is returned.[448]

In 1985, the legislature deleted from the Mississippi Code all language in regard to specific terms of court and instead required that the senior circuit court judge set the terms for each county in the district for the coming year.[449] Further, it required the judge to, on or before October 1, file a copy of that order with the Secretary of State, who would publish and distribute that information to the membership of the state bar and to public officials.[450] Therefore, the statutory language referring to terms when grand juries will serve is still applicable but one must look outside the statute to find the dates.

After 1972, when the constitution was amended in regard to recalling the grand juries, and after the rash of interpretive cases in 1976, the legislature addressed the issue of waivers of indictment by an accused.[451] A resolution proposing an amendment to section 27 of the state constitution was adopted to allow a waiver.[452] The Judiciary Commission had recommended: "In indictable offenses less than capital, the legislature may provide that an accused who is represented by counsel may waive indictment and be proceeded against criminally by information on affidavit filed by the district attorney . . . ."[453]

Between 1969 and 1977, the cases[454] involving invalidity of capital punishment statutes and the testing of new statutes which were hoped to meet federal constitutional muster were occupying the minds of lawmakers in Mississippi as well as elsewhere. Therefore it is not surprising that legislators skirted the whole issue of distinguishing between capital and noncapital cases in the 1977 resolution stating: "No person shall, for any indictable offense, be proceeded against criminally by

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447. Act of Apr. 16, 1984, ch. 351, 1984 Miss. Laws 77 (originally codified at MISS. CODE ANN. § 13-5-39 (Supp. 1984)) (current version at MISS. CODE ANN. § 13-5-39 (Supp. 1993)).

448. *Id.*

449. Act of Apr. 11, 1985, ch. 502, § 22, 1985 Miss. Laws 557, 563 (originally codified at MISS. CODE ANN. § 9-7-3 (Supp. 1985)) (current version at MISS. CODE ANN. § 9-7-3 (1991)).

450. *Id.*

451. S. Con. Res. 590, Reg. Sess., Act of Feb. 18, 1977, ch. 593, 1977 Miss. Laws 1126.

452. *Id.*

453. MISS. JUDICIARY COMM'N, *supra* note 6, at Appendix 33.

454. Furman v. Georgia, 408 U.S. 238 (1972).

information, except in cases . . . *where a defendant represented by counsel by sworn statement waives indictment* . . . ."[455]

The net result is that in fewer than ten years, the problems in these two areas were eliminated so that (1) a grand jury may sit at any time during the year to bring valid indictments and (2) an accused may waive indictment, plead guilty, and begin his sentence without delay when he is represented by counsel.[456]

3. Defense for the Indigent

Until 1964, indigent criminal defendants in Mississippi were provided with court-appointed counsel only in capital cases.[457] In 1964, the law was amended to permit appointment of counsel to defend persons charged with felonies less than capital once they have been arraigned.[458] The Judiciary Commission in 1970, recommended (1) the creation of the office of State Public Defender to handle all appeals of indigent defendants and (2) on the local level, a panel of attorneys who have agreed to handle indigent defendants' cases to be paid on an hourly basis plus actual expenses.[459] Though those recommendations died that year in their respective legislative committees, in 1971 the Mississippi Legislature did pass a law providing that the court could, in its discretion, appoint counsel to defend any person charged with a felony, a misdemeanor punishable by confinement of at least ninety days, or an act of delinquency, if the court was satisfied that such person was indigent and could not employ counsel.[460] The compensation for such appointed counsel was to be $500 for representation in circuit court, $100 for representation in a court not of record, $1000 for two attorneys in a capital case, and $500 for services on appeal.[461]

The same year, in the Mississippi House of Representatives, two bills were introduced which would have established a public defender system statewide. House Bill 410, which was introduced by Representative Merideth and would have provided for a system of public defenders, died in committee.[462] House Bill 750, which was introduced by Representative Meek and would have created an office of state public defender, failed to pass on the first vote and was not voted on again.[463]

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455. MISS. CONST. art. 3, § 27 (amended 1977) (new language emphasized).

456. *See supra* notes 413-53.

457. MISS. CODE ANN. § 2505 (1942). The compensation provided for court-appointed counsel in *capital* cases was $75 if the defendant plead guilty, $150 if the trial was conducted and concluded, and $250 (total) if the conviction was appealed to the Mississippi Supreme Court.

458. Act of Apr. 8, 1964, ch. 357, 1964 Miss. Laws 489 (originally codified at MISS. CODE ANN. of 1942 § 2505 (Supp. 1972)) (current version at MISS. CODE ANN. § 99-15-27 (1973)). The compensation in non-capital cases was set at $50 for a case disposed of without trial, $100 for a case that went to trial, and $200 for a case that was appealed to the state supreme court.

459. MISS. JUDICIARY COMM'N, *supra* note 6, at 33.

460. Act of Apr. 5, 1971, ch. 490, 1971 Miss. Laws 604 (originally codified at MISS. CODE ANN. of 1942 § 2505-1 (Supp. 1972)) (current version at MISS. CODE ANN. § 99-15-15 (1972)).

461. *Id.*

462. H.R. 410, Reg. Sess., 1971 Miss. House J. 1264.

463. H.R. 750, Reg. Sess., 1971 Miss. House J. 1264.

The following year, Representative Merideth introduced in the House of Representatives a bill which would have provided for the establishment of the office of public defender on a district or county option basis.[464] The bill was passed by the House of Representatives and was recommended for passage by the Senate Judiciary Committee but was never voted on by the Senate. That same year, however, the legislature did enact two local and private laws creating public defender offices, one for Washington County[465] and one for the City of Jackson.[466] Both laws were approved by the Governor. These laws and the other local laws discussed herein were, in most instances, introduced by the senator or representative from the county or municipality involved.

In 1973, the legislature passed two more local public defender bills, one for the Mississippi State Penitentiary[467] and one for Hinds County.[468] Both were vetoed by the Governor.[469] In assigning reasons for the veto of House Bill 403, a bill to establish a public defender for the penitentiary, Governor Waller noted, *inter alia*, that the bill provided that appointments of the public defender and assistant public defenders were subject to the approval of the attorney general, and that such a provision would create a conflict of interest because of the attorney general's supervision of criminal appeals.[470] In assigning his reasons for the veto of House Bill 1218, which would have provided for the establishment of the office of public defender in Hinds County, Governor Waller made the following statement:

> The public defender system would promote unfair and unreasonable erosion of the right of a person charged with a crime to be defended by an attorney engaged in the private practice of law and would erode away the right of many scores of private practicing attorneys to engage in criminal practice. This Bill would create a system of tax supported legal services which would encourage those charged with crimes to avoid personal payment of Attorney's fees. This is a form of socialized law practice which abrogates the free enterprise system.[471]

Also in 1973, Representative Abraham introduced in the House of Representatives House Bill 36 to provide for the establishment of a public defender system on a district or county option basis.[472] The bill was never voted on by the House.[473]

In 1974, six local and private bills to provide public defender offices for various counties were introduced in the legislature.[474] Bills to establish public defender

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464. H.R. 90, Reg. Sess., 1972 Miss. House J. 1265.
465. Act of May 9, 1972, ch. 867, 1972 Miss. Loc. & Priv. Laws 5.
466. Act of May 4, 1972, ch. 888, 1972 Miss. Loc. & Priv. Laws 57.
467. H.R. 403, Reg. Sess. (1973).
468. H.R. 1218, Reg. Sess. (1973).
469. 1973 Miss. House J. 1255; 1973 Miss. House J. 1278.
470. 1973 Miss. House J. 1278-79.
471. 1973 Miss. House J. 1255.
472. H.R. 36, Reg. Sess. (1973).
473. 1973 Miss. House J. 1918.
474. *See infra* notes 475-80 and accompanying text.

offices for the state penitentiary[475] and for Hinds County[476] both died in committee. Four bills, however, passed in both houses and reached the Governor's desk. These bills were to create public defender systems in Harrison,[477] Jackson,[478] Pike,[479] and Warren[480] counties. All four were vetoed by the Governor.[481] In vetoing these bills, Governor Waller assigned such reasons as the need for uniformity among various county systems and certain defects he perceived in the provision regarding qualifications and compensation.[482] The bill to establish an office of public defender for Harrison County became law when both houses of the legislature passed it over the governor's veto.[483]

In 1975, there were three more attempts in the legislature to pass laws authorizing the establishment of the office of public defender in individual counties. Bills to establish the office of public defender in Hinds County[484] and Jackson County[485] were passed by both houses but vetoed by the Governor, who again cited as his reasons lack of uniformity among the counties and defects in the provisions regarding qualifications and compensation.[486] The bill for Hinds County was passed by the legislature over the Governor's veto.[487] That same year, a bill to establish a public defender system for Warren County[488] was passed by the House of Representatives and the Senate and became law without the Governor's signature.[489]

In 1976, Representative Gerald Blessey introduced a bill to provide for a state system of public defenders.[490] That bill died in committee. A similar bill in the Senate,[491] introduced by Senator John Corlew, also died in committee. Again, however, several bills were passed which provided public defenders for individual counties. All of these bills were signed by new Governor Cliff Finch, and public defenders were authorized for Forrest,[492] Jackson,[493] Lauderdale,[494] and Yazoo[495] counties.

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475. H.R. 92, Reg. Sess. (1974).
476. H.R. 1207, Reg. Sess. (1974).
477. S. 2545, Reg. Sess. (1974).
478. S. 1960, Reg. Sess. (1974).
479. S. 2462, Reg. Sess. (1974).
480. H.R. 1411, Reg. Sess. (1974).
481. 1974 Miss. House J. 1478, 1500-01; 1974 Miss. Senate J. 1459.
482. *Id.*
483. Act of Jan. 8, 1979, ch. 979, 1974 Miss. Loc. & Priv. Laws 150.
484. H.R. 427, Reg. Sess. (1975).
485. S. 2991, Reg. Sess. (1975).
486. 1975 Miss. House J. 1474; 1975 Miss. Senate J. 1656.
487. Act of Jan. 14, 1976, ch. 1011, 1975 Miss. Loc. & Priv. Laws 160.
488. S. 2406, Reg. Sess. (1975).
489. Act of Mar. 28, 1975, ch. 852, 1975 Miss. Loc. & Priv. Laws 25.
490. H.R. 695, Reg. Sess. (1976).
491. S. 2412, Reg. Sess. (1976).
492. Act of May 25, 1976, ch. 981, 1976 Miss. Loc. & Priv. Laws 137.
493. Act of May 24, 1976, ch. 976, 1976 Miss. Loc. & Priv. Laws 127.
494. Act of May 25, 1976, ch. 975, 1976 Miss. Loc. & Priv. Laws 125.
495. Act of May 26, 1976, ch. 980, 1976 Miss. Loc. & Priv. Laws 136.

The public defender bills did not fare well in 1977. A local bill to authorize a public defender for Marshall County[496] died in committee in the House of Representatives, as did two bills to establish a statewide system, one introduced by Representative John Pearson[497] and the other introduced by Representative Helen McDade.[498] Again in 1978, Representative McDade introduced a bill to establish a statewide public defender system.[499] It too died in committee in the House of Representatives.[500] Another attempt to establish an office of public defender for Marshall County[501] died in committee in the House.[502] At that time Washington, Harrison, Hinds, Warren, Forrest, Jackson, Lauderdale and Yazoo counties, and the City of Jackson were authorized by state law to establish the office of public defender.

Although there are some variations, the basic scheme of these laws was that once a determination is made by the senior circuit judge or board of supervisors that there are enough indigent defendants to warrant establishment of a public defender's office, the board of supervisors has the authority to establish that office. Six of the laws provide that the public defender is to be appointed, usually by the board of supervisors.[503] In Lauderdale County the office is filled by election;[504] in Yazoo County the office, which is part-time, is filled by a public defender hired on a month-to-month basis,[505] and in Forrest County the office is to be filled "as are other vacancies in county offices."[506]

All of the laws contain a provision for terminating the office, except for the laws for the City of Jackson[507] and Yazoo County.[508] The laws regarding Harrison County and Jackson County provide for automatic repeal upon the effective date of any statewide law establishing a system of public defenders.[509] Apparently, the other counties could terminate the office as provided in the statutes in the event of the passage of a statewide law.

The year 1979 was to be a year of change for Mississippi's law regarding public defenders. That year there was another unsuccessful attempt to pass a local and private law authorizing Marshall County to establish an office of public defender.

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496. S. 2929, Reg. Sess. (1977).

497. H.R. 964, Reg. Sess. (1977).

498. H.R. 1115, Reg. Sess. (1977).

499. H.R. 142, Reg. Sess. (1978).

500. *Id.*

501. S. 2870, Reg. Sess. (1978).

502. 1978 Miss. House J. 1572.

503. Act of May 25, 1976, ch. 980, 1972 Miss. Loc. & Priv. Laws 136; Act of May 24, 1976, ch. 976, 1976 Miss. Loc. & Priv. Laws 127; Act of Jan. 14, 1976, ch. 1011, 1975 Miss. Loc. & Priv. Laws 160; Act of Mar. 28, 1975, ch. 852, 1975 Miss. Loc. & Priv. Laws 25; Act of Jan. 8, 1975, ch. 979, 1974 Miss. Loc. & Priv. Laws 150; Act of May 4, 1972, ch. 888, 1972 Miss. Loc. & Priv. Laws 57.

504. Act of May 25, 1976, ch. 975, 1976 Miss. Loc. & Priv. Laws 125.

505. Act of May 25, 1976, ch. 980, 1976 Miss. Loc. & Priv. Laws 136.

506. Act of May 25, 1976, ch. 981, 1976 Miss. Loc. & Priv. Laws 137.

507. Act of Mar. 4, 1972, ch. 888, 1972 Miss. Loc. & Priv. Laws 57.

508. Act of May 25, 1976, ch. 980, 1975 Miss. Loc. & Priv. Laws 136.

509. Act of Jan. 8, 1975, ch. 979, 1974 Miss. Loc. & Priv. Laws 150; Act of May 24, 1976, ch. 976, 1976 Miss. Loc. & Priv. Laws 127.

That bill died in committee.[510] Another bill offered by Representative McDade, which would have established a statewide system of public defenders, also died in committee.[511] However, on January 3, 1979, the second day of the legislative session, Senator Mulholland introduced Senate Bill 2430 to authorize the board of supervisors in *any* county to establish a public defender office.[512] The bill was passed by both houses of the legislature and was approved by the Governor on April 18, 1979,[513] to be effective from and after October 1, 1979.[514] The new law[515] provided that when the board of supervisors in any county of a circuit court district determines that there is a sufficient number of indigent defendants to warrant establishment of the office of public defender, the board of supervisors is authorized to establish such office and to determine whether the public defender shall be employed full-time or part-time.[516] The senior circuit judge appoints the public defender and any assistant public defenders authorized by the board of supervisors.[517] The compensation for the public defender and any assistant public defenders is set by the board of supervisors or boards of supervisors and corresponds to the salary of the county prosecuting attorney or district attorney.[518] Any full-time public defender or full-time assistant public defender is prohibited from participating in the private practice of law.[519]

Whenever any person is charged with a felony, misdemeanor, or act of delinquency, the arresting authority is required to give the arrested person an opportunity to sign an affidavit of indigency.[520] If the affidavit is signed, the public defender represents the person, unless the right to counsel is waived.[521] The public defender also represents persons in need of mental treatment.[522] The law further provides for appointment of counsel pursuant to the 1971 law[523] in cases where there is a conflict of interest or a need for additional counsel.[524] Termination of the office of public defender, with six months' notice and at the end of the public defender's term, is within the discretion of the board of supervisors.[525]

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510. S. 2823, Reg. Sess. (1979).

511. H.R. 508, Reg. Sess. (1979).

512. 1979 Miss. Senate J. 1891.

513. Act of Apr. 18, 1979, ch. 509, 1979 Miss. Laws 1099 (originally codified at MISS. CODE ANN. §§ 25-32-1 to -19 (Supp. 1979)) (currently codified at MISS. CODE ANN. §§ 25-32-1 to -19 (1991)).

514. *Id.*

515. *Id.*

516. MISS. CODE ANN. § 25-32-1 (Supp. 1980).

517. MISS. CODE ANN. § 25-32-3 (Supp. 1980).

518. MISS. CODE ANN. § 25-32-5 (Supp. 1980).

519. *Id.*

520. MISS. CODE ANN. § 25-32-9 (Supp. 1980).

521. *Id.*

522. *Id.*

523. MISS. CODE ANN. § 99-15-15 (1972).

524. MISS. CODE ANN. § 25-32-13 (Supp. 1980).

525. MISS. CODE ANN. § 25-32-15 (Supp. 1980).

A bill[526] providing legal immunity to public defenders and court-appointed counsel failed in the House of Representatives in 1980.[527] However, the fees set in 1971 for court-appointed counsel were raised in 1980 to $1000 for representation in circuit court, $200 for representation in a court not of record, $2000 for two attorneys in a capital case, and $1000 for services on appeal.[528]

With each county or district having wide latitude to resolve its own cost crises in regard to defense for the indigent, the legislature did not deal further with the public defender issue. However, the fees for court-appointed counsel, which remained unchanged by the legislature since 1980, were the subject of judicial consideration in two cases in 1990.[529]

The attorneys in these murder cases attacked the statute which put a maximum on the fees that could be paid to court-appointed counsel.[530] The *Wilson* attorneys claimed the statute was unconstitutional because it deprived the defendant of effective assistance of counsel and violated the Equal Protection Clause.[531] The court upheld the constitutionality of the statute, but under the portion of the statute that allowed the circuit judge to grant reimbursement of actual expenses, they created "a rebuttable presumption that a court appointed attorney's actual overhead within the statute is $25.00 per hour."[532] Since this presumption is created by the court, it can be amended by the court without legislative action. The court dismissed the ineffective assistance of counsel claim, saying that those rare cases could be handled on an individual basis and would not require blanket rules as to compensation.[533]

In regard to equal protection and taking attorneys' services without just compensation, the court referred to *Young v. State*[534] which had recognized the duty of attorneys as officers of the court to contribute to the fair administration of justice.[535] While recognizing the court had the power to ensure that courts are properly funded[536] the opinion reiterated the legislative responsibility:

> Nothing in this opinion is meant to interfere with the right of the Legislature to order the expenditure of public funds but in the light of this opinion, the Legislature may wish to reconsider the funding of attorney representation of indigents. In fact, we would encourage the Legislature to review the system and provide funds for the representation of indigent defendants in capital cases from State funds rather than

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526. H.R. 272, Reg. Sess. (1980).

527. 1980 Miss. House J. 1724.

528. Act of May 2, 1980, ch. 444, 1980 Miss. Laws 861 (originally codified at MISS. CODE ANN. § 99-15-17 (Supp. 1980)) (current version at MISS. CODE ANN. § 99-15-17 (1993)).

529. Pruett v. State, 574 So. 2d 1342 (Miss. 1990); Wilson v. State, 574 So. 2d 1338 (Miss. 1990). *See also* Tracy L. Morris, Comment, *Constitutional Law: Validity of Attorney Fee Caps in Indigent Cases: Mississippi's Challenge*, 9 MISS. C. L. REV. 373 (1989).

530. Pruett v. State, 574 So. 2d 1342 (Miss. 1990); Wilson v. State, 574 So. 2d 1338 (Miss. 1990).

531. *Wilson*, 574 So. 2d at 1338.

532. *Id.* at 1340.

533. *Id.*

534. 255 So. 2d 318 (Miss. 1971).

535. *Id.*

536. Hosford v. State, 525 So. 2d 789, 797-98 (Miss. 1988).

county funds. Since the State funds the prosecution in these cases, why not the defense?[537]

In 1988, the Capital Defense Resource Center was established in Jackson with private foundation funds in cooperation with the Hinds County Bar Association, the Mississippi State Bar, and Mississippi College School of Law, but no publicly funded statewide relief was granted.[538] In 1992, Hinds County established a full-time public defender's office with six assistants, two detectives, and four other support staff.[539] Prior to that date a system of part-time public defenders had been employed.[540]

C. Redistricting and Additional Judges

During the life of the Judiciary Commission, much time, research, and discussion were dedicated to the problem of the hodgepodge of district lines and workloads.[541] The Commission considered a plan to consolidate the circuit and chancery courts into one "district" court which would have required only one set of districts rather than the present dissimilarity.[542] That motion passed but was held on a motion to reconsider; was reconsidered and failed; then the motion to reconsider the failure of the original motion failed so that the present dual system ultimately had the majority.[543]

Similarly, the Commission considered and adopted, yet later rejected a plan to leave the courts unchanged, but to consolidate the districts, so that every district would have approximately 100,000 in population and at least one circuit judge and one chancellor.[544] That way each judge and the district attorney would be elected from the same group of counties. That plan, however, was rejected because it would pit two pairs of incumbent judges against each other and create two additional judgeships.[545] Senator W. B. Alexander, Jr., reminded the Commission that the legislature and the electorate believed there were too many judges already and that the creation of more judgeships would be difficult to pass through the legislature.[546]

In 1969, there were twenty-five chancery judges and twenty-four circuit judges with a total of nineteen chancery court districts and nineteen circuit court

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537. Wilson v. State, 574 So. 2d 1338, 1341 (Miss. 1990).

538. Interview with Professor Judith J. Johnson, of Mississippi College School of Law, in Jackson, Miss. (July 24, 1992).

539. Telephone Interview with Tom Fortner, Public Defender, Jackson, Miss. (June 23, 1993).

540. *Id.*

541. MISS. JUDICIARY COMM'N, *supra* note 6, at 38-41.

542. MISS. JUDICIARY COMM'N, *supra* note 6, at 39.

543. Although the commission minutes were in the possession of Chief Justice William N. Ethridge, Jr., when he died in 1971, they have never been found, even in the move of the supreme court from the New Capitol to the Gartin Justice Building in 1973. This author had the responsibility for preparing the minutes and well remembers the "flip-flop" votes even though the exact date and page of the minute book may have been forgotten.

544. *Id.*

545. *Id.*

546. *Id.*

districts.[547] With the exception of the two Gulf Coast districts, no chancery and circuit districts coincided exactly.[548] Since 1982, Mississippi has had thirty-nine chancellors and forty circuit judges with a total of twenty districts for each court, still with only the two coastal districts coinciding.[549] In 1984, when the legislature mandated the criteria for determining the number of judges in each district,[550] no mention was made of equalizing the districts, but one can assume that this action was in response to the constitutional amendment to section 152, ratified in 1982 that stated: "The Legislature shall, by statute, establish certain criteria by which the number of judges in each district shall be determined, such criteria to be based on population, the number of cases filed and the appropriate data,"[551] and after that mandated decennial redistricting.[552] The experience of 1985[553] leads one to believe that court redistricting is a distant mirage at best. The Mississippi Judicial College provided data, but the legislature has not articulated any criteria.[554]

In 1970, an additional circuit court judgeship was created for the Nineteenth District,[555] including Greene, George, and Jackson counties, as recommended by the Judiciary Commission.[556] The Commission had recommended a realignment of counties within the Third and Fourteenth Chancery Districts and the addition of one judgeship.[557] There was such a hue and cry raised over tampering with district lines that the legislature just created "Place Two" in each of the districts and avoided further conflict.[558] The recommended solution to the Tenth Chancery District's problems would have required redrawing the lines in districts nineteen, four, and fifteen,[559] so the 1970 Legislature adjourned without addressing that issue.

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547. MISS. JUDICIARY COMM'N, *supra* note 6, at Charts C-8, C-10, C-11, C-13.

548. MISS. JUDICIARY COMM'N, *supra* note 6, at Charts C-10, C-13.

549. Act of Mar. 11, 1971, ch. 344, 1971 Miss Laws 341 (originally codified at MISS. CODE ANN. of 1942 §§ 1394, 1401-02 (Supp. 1972)) (current version at MISS. CODE ANN. §§ 9-7-3, -23, -27 (1991)); Act of Apr. 22, 1982, ch. 481, 1982 Miss. Laws 650 (originally codified at MISS. CODE ANN. §§ 9-7-53, -54 (Supp. 1982)) (current version at MISS. CODE ANN. §§ 9-7-53, -54 (1991)) (circuit); Act of Apr. 11, 1977, ch. 451, 1977 Miss. Laws 758 (originally codified at MISS. CODE ANN. §§ 9-5-57, -3, -9 (Supp. 1977)) (current version at MISS. CODE ANN. §§ 9-5-57, -3, -9 (1991)); Act of Mar. 19, 1982, ch. 355, 1982 Miss. Laws 213 (originally codified at MISS. CODE ANN. §§ 9-5-3, -9, -57 (Supp. 1982)) (current version at MISS. CODE ANN. §§ 9-5-3, -9, -57 (1991)) (made permanent in Act of Apr. 11, 1985, ch. 502, 1985 Miss. Laws 557) (chancery).

550. MISS. CODE ANN. §§ 9-5-3, 9-7-3 (Supp. 1984).

551. Act of Apr. 1, 1981, ch. 708, 1981 Miss. Laws 1829 (codified at MISS. CONST. art. 6, § 152).

552. MISS. CONST. art. 6, § 152.

553. Act of Apr. 11, 1985, ch. 502, 1985 Miss. Laws 557. *See* Miss. State Bar Minutes, 80th Annual General Assembly, at 32 (June 7, 1985).

554. *See supra* parts I.H., II.C.

555. Act of Mar. 3, 1970, ch. 333, 1970 Miss. Laws 405 (originally codified at MISS. CODE ANN. of 1942 § 1411.8 (Supp. 1970)) (current version at MISS. CODE ANN. § 9-7-51 (1972)).

556. MISS. JUDICIARY COMM'N, *supra* note 6, at 40.

557. MISS. JUDICIARY COMM'N, *supra* note 6, at 40.

558. Act of Mar. 30, 1970, ch. 326, 1970 Miss. Laws 399 (originally codified at MISS. CODE ANN. of 1942 § 1226.7-01 (Supp. 1970)) (current version at MISS. CODE ANN. § 9-5-45 (1972)); Act of Apr. 3, 1970, ch. 327, 1970 Miss. Laws 400 (originally codified at MISS. CODE ANN. of 1942 § 1218.1 (Supp. 1970)) (current version at MISS. CODE ANN. § 9-5-13 (1972)).

559. MISS. JUDICIARY COMM'N, *supra* note 6, at 41.

In 1971, the legislature added a fourth chancellor to District Five which consists of only Hinds County, but which by far is the greatest urban center of the state.[560] Also in 1971, two circuit judgeships were added.[561] Circuit District Two, including Harrison, Hancock, and Stone counties, received a third judge[562] and Circuit District Twenty, including Madison and Rankin counties, was created out of the seventh and eighth circuit districts with a new judgeship.[563]

In 1972, only one new judgeship was created: Chancery District Eight, including Harrison, Hancock, and Stone.[564] In 1973, one new judgeship was added to Chancery District Sixteen, including Greene, George, and Jackson counties.[565] In 1974, Chancery District One, including eight counties in the northeast corner of the state and Chancery District Six, including six counties in mid-state, received new judgeships[566] and Circuit District One, including seven counties in the northeast corner of the state, received a third judge.[567] In 1975, Chancery District Ten finally received relief as two new judgeships were added.[568] Chancery District Twelve, including Lauderdale and Clark counties, received a new chancery judge.[569] Circuit District Three and Sixteen each received a second judge.[570]

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560. Act of Mar. 17, 1971, ch. 381, 1971 Miss. Laws 397 (originally codified at MISS. CODE ANN. of 1942 § 1220.1 (Supp. 1971)) (current version at MISS. CODE ANN. § 9-5-19 (1972)).

561. *See infra* notes 562-63.

562. Act of Mar. 2, 1971, ch. 328, § 2, 1971 Miss. Laws 321 (originally codified at MISS. CODE ANN. of 1942 § 1396.1 (Supp. 1971)) (current version at MISS. CODE ANN. §§ 9-7-9 to -11 (1972)).

563. Act of Mar. 11, 1971, ch. 344, 1971 Miss. Laws 341 (originally codified at MISS. CODE ANN. of 1942 §§ 1394, 1401, 1402, 1411.9 (Supp. 1971)) (current version at MISS. CODE ANN. §§ 9-7-3, -23, -27, -53, -54 (1972)).

564. Act of Mar. 9, 1972, ch. 310, 1972 Miss. Laws 304 (originally codified at MISS. CODE ANN. of 1942 § 1223.1 (Supp. 1972)) (current version at MISS. CODE ANN. § 9-5-29 (1972)).

565. Act of Mar. 29, 1973, ch. 421, 1973 Miss. Laws 495 (codified at MISS. CODE ANN. § 9-5-50 (Supp. 1973)).

566. Act of Mar. 18, 1974, ch. 371, 1974 Miss. Laws 434 (codified at MISS. CODE ANN. § 9-5-22 (Supp. 1974)); Act of Mar. 18, 1974, ch. 373, 1974 Miss. Laws 435 (codified at MISS. CODE ANN. §§ 9-5-7, 9-7-7 (Supp. 1974)).

567. Act of Mar. 18, 1974, ch. 373, 1974 Miss. Laws 435 (codified at MISS. CODE ANN. §§ 9-5-7, 9-7-7 (Supp. 1974)).

568. Act of Mar. 5, 1975, ch. 325, 1975 Miss. Laws 423 (codified at MISS. CODE ANN. §§ 9-5-35, -36 (Supp. 1975)).

569. Act of Feb. 26, 1975, ch. 312, 1975 Miss. Laws 378 (codified at MISS. CODE ANN. § 9-5-40 (Supp. 1975)).

570. Act of Mar. 12, 1975, ch. 344, 1975 Miss. Laws 445 (codified at MISS. CODE ANN. § 9-7-44 (Supp. 1975)); Act of Apr. 7, 1975, ch. 474, 1975 Miss. Laws 696 (codified at MISS. CODE ANN. § 9-7-14 (Supp. 1975)).

In 1976, no new judgeships were added. Then, beginning in 1977, the creation of every new judgeship except one[571] contained an automatic repealer,[572] including the creation of the Twentieth Chancery Court District.[573] In two of the additional circuit court posts, there was language which made the creation of an additional circuit judge contingent on the county's creation of a county court.[574] The reasoning of the House Committee was that since the circuit judge's salary is paid out of state appropriations and the county judge's salary is paid by the county, the county could show its "good faith" in trying to relieve the situation by first establishing a county court.[575]

There is a curious thing about those two provisions. Section two of chapter 417, expressly states:

> The nomination and election of an additional judge of the Fifteenth Circuit Court District, as provided herein, shall be held during the 1982 judicial elections as provided by Section 23-5-235. The term of the judge to fill Place Two shall begin on January 1, 1983, *provided that on or before such date every county in the Fifteenth Circuit Court District with a population exceeding thirty-five thousand (35,000) inhabitants, as shown by the 1980 federal decennial census, shall have established a county court.* In the event that every such county in the Fifteenth Circuit Court District shall not by January 1, 1983, have established a county court, then the term of the additional judge to fill Place Two shall begin on the date upon which a county court is established in such counties.[576]

The 1980 census figures reveal that no county in that district has as many as 35,000 inhabitants.[577] The census reveals the following:

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571. Act of Mar. 19, 1979, ch. 389, 1979 Miss. Laws 678 (codified at MISS. CODE ANN. § 13-1-114 (Supp. 1979)).

572. Act of Mar. 31, 1977, ch. 431, 1977 Miss. Laws 653 (codified at MISS. CODE ANN. § 9-5-50 (Supp. 1977)); Act of Mar. 3, 1978, ch. 324, 1978 Miss. Laws 438 (codified at MISS. CODE ANN. §§ 9-7-19, -20 (Supp. 1978)); Act of Mar. 14, 1978, ch. 355, 1978 Miss. Laws 510 (codified at MISS. CODE ANN. § 9-7-17 (Supp. 1978)); Act of Mar. 14, 1978, ch. 360, 1978 Miss. Laws 531 (codified at MISS. CODE ANN. §§ 9-7-31, -32, -43 (Supp. 1978)); Act of Mar. 14, 1978, ch. 365, 1978 Miss. Laws 568 (codified at MISS. CODE ANN. §§ 9-7-29, -30 (Supp. 1978)); Act of Mar. 31, 1978, ch. 446, 1978 Miss. Laws 737 (codified at MISS. CODE ANN. §§ 9-5-37, -38 (Supp. 1978)); Act of Mar. 25, 1982, ch. 413, 1982 Miss. Laws 369 (codified at MISS. CODE ANN. § 9-7-6 (Supp. 1982)); Act of Mar. 25, 1982, ch. 417, 1982 Miss. Laws 378 (codified at MISS. CODE ANN. §§ 9-7-41, -42 (Supp. 1982)); Act of Mar. 30, 1982, ch. 420, 1982 Miss. Laws 382 (codified at MISS. CODE ANN. § 9-7-34 (Supp. 1982)); Act of Mar. 30, 1982, ch. 421, 1982 Miss. Laws 383 (codified at MISS. CODE ANN. § 9-7-25 (Supp. 1982)); Act of Apr. 6, 1982, ch. 448, 1982 Miss. Laws 516 (codified at MISS. CODE ANN. §§ 73-7-7 to -53 (Supp. 1982)).

573. Act of Apr. 11, 1977, ch. 451, 1977 Miss. Laws 758 (codified at MISS. CODE ANN. §§ 9-5-3, -9, -57 (Supp. 1977) (amended 1982) (which contained an automatic repealer as of Dec. 31, 1982)); Act of Mar. 19, 1978, ch. 355, 1982 Miss. Laws 213 (codified at MISS. CODE ANN. §§ 9-5-3, -9, -57 (Supp. 1978) (which extended the repealer to December 31, 1986, to conform to the same date as those listed in the previous note)).

574. Act of Mar. 25, 1982, ch. 481, 1982 Miss. Laws 378 (codified at MISS. CODE ANN. §§ 9-7-41, -42 (Supp. 1982)) (15th Dist.); Act of Apr. 22, 1982, ch. 481, Miss. Laws 650 (codified at MISS. CODE ANN. §§ 9-7-53, -54 (Supp. 1982)) (amending §§ 9-7-53, -54) (20th Dist.).

575. Telephone Interview with Rep. Horace L. Merideth, Jr., of Greenville, Miss. (Aug. 3, 1988).

576. Act of Mar. 25, 1982, ch. 417, § 2(3), 1982 Miss. Laws 378, 380 (codified at MISS. CODE ANN. § 9-7-42 (Supp. 1982)) (emphasis added).

577. MISSISSIPPI OFFICIAL AND STATISTICAL REGISTER, 1984-88, at 26 (1985).

Jefferson Davis 13,846
Lamar 23,821
Lawrence 12,518
Marion 25,708
Pearl River ..... 33,795[578]

Section 2, chapter 481, in regard to the Twentieth District states expressly:

> For the purpose of filling the judgeship created by this section, being "Place Two," a special election shall be called and held by the boards of election commissioners of the counties constituting the Twentieth Circuit Court District within ninety (90) days after the date this act is effectuated under Section 4 *provided that on or before such date every county in the Twentieth Circuit Court District with a population exceeding thirty thousand (30,000) according to the 1980 Federal Decennial Census, shall have established a county court.* In the event that such county in the Twentieth Circuit Court District shall not have established a county court as required by this subsection prior to ninety (90) days after the date this act is effectuated under Section 4 of this Act, the special election provided for in this subsection shall take place within ninety (90) days after such court is established by such county. The special election provided for in this subsection shall as far as practicable, be held in accordance with Section 23-5-203, Mississippi Code of 1972.[579]

Madison and Rankin counties are in the Twentieth Circuit Court District.[580] Madison County, which has had a county court for many years, had a population of 41,613 in the 1980 census.[581] Rankin County, which had never had a county court and which was obviously being sent a message by the legislature to take affirmative action to deal with and pay for some measures to alleviate a burgeoning caseload in circuit court, is shown by the 1980 census to have a population of 69,427.[582] Rankin County did create such a county court.[583]

An objective bystander might wonder if the legislature might not have *meant* to say "30,000" in the Fifteenth and use "35,000" or some larger figure for the Twentieth. Since it is a maxim of statutory construction that one may never presume that the legislature intended to do a vain and useless thing, and since there are no county courts established in the five counties that make up the Fifteenth Circuit Court District,[584] and since there presently are two judges elected and serving in that district,[585] the only logical explanation seems to be that if the population rises above 35,000 in the future in any one of those five counties, such county must establish a county court or the district will lose a judge's post. That, however, cannot

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578. *Id.*

579. Act of Apr. 22, 1982, ch. 481, § 2, 1982 Miss. Laws 650, 651 (codified at MISS. CODE ANN. § 9-7-54 (Supp. 1982)) (emphasis added).

580. MISS. CODE ANN. § 9-7-53 (Supp. 1982).

581. MISSISSIPPI OFFICIAL AND STATISTICAL REGISTER, 1984-88, at 26 (1985).

582. *Id.*

583. 60 RANKIN COUNTY BOARD OF SUPERVISORS MINUTES 53 (Apr. 26, 1982).

584. COUNTY COURT JUDGES, MISSISSIPPI JUDICIARY & COURT CALENDAR 32 (Jan. 1994).

585. *Id.* at 29.

happen since the language applies only to the 1980 census, which will not increase.

A search of the *House Journal* for 1982, however, provides the key to understanding the puzzle. Senate Bill 2768 as introduced by Senator Martin Smith of the forty-seventh circuit[586] contained no county court language.[587] In fact, it was the *caseload* in Pearl River County that was causing the demand for an additional circuit court judge.[588] Some relief might have been available with the creation of a county court, but the board of supervisors, for reasons persuasive to them at the time, would not agree to create a county court.[589]

The bill was passed by the Senate[590] and sent to the House where it was referred to the Judiciary "A" Committee.[591] Both Senate Bills 2768 and 2611, which provided for additional circuit court judges, were considered the same day.[592] Each came out of the House Committee with amendments that were essentially new bills. The House amendment in regard to the twentieth district calling for a county court in a county in excess of 30,000 was passed without change[593] and became chapter 481.[594] Senate Bill No. 2768, however, had an amendment from the floor to the Committee amendment to strike the words and figures "thirty thousand (30,000)" and to insert in lieu thereof the words and figures "thirty-five thousand (35,000)."[595] The authors of that amendment were Representatives W. E. Anderson, III of Lamar County, Terrell Breland of Pearl River County, and Wade O. Smith of Pearl River County.[596]

The floor amendment was adopted.[597] The Senate concurred in the House amendments and it became chapter 417.[598] By changing the figure to be higher than any county in the district, the representatives in the affected county made the Committee's mandate meaningless and yet secured a second judge. The Senate concurred in Senate Bill 2768 amendments, knowing that if they went to conference to remove the meaningless provision, they might lose the circuit judge.[599]

No new judgeships have been added since 1982. In 1984, after the state constitution was amended to limit the courts to twenty circuit and twenty chancery court

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586. 1982 Miss. Senate J. 148.

587. *Id.*

588. Telephone Interview with Senator Martin Smith, of Poplarville, Miss. (July 8, 1987) [hereinafter Senator Smith].

589. *Id.*

590. 1982 Miss. Senate J. 292.

591. 1982 Miss. House J. 327.

592. 1982 Miss. House J. 596-97.

593. *Id.*

594. Act of Apr. 22, 1982, ch. 481, 1982 Miss. Laws 650 (codified at MISS. CODE ANN. §§ 9-7-53, -54 (Supp. 1982)).

595. 1982 Miss. House J. 596-97.

596. 1982 Miss. House J. 597.

597. *Id.*

598. Act of Mar. 25, 1982, ch. 417, 1982 Miss. Laws 378 (codified at MISS. CODE ANN. §§ 9-7-41, -42 (Supp. 1982)).

599. Senator Smith, *supra* note 588.

districts and require redistricting after every decennial census,[600] the legislature set forth the matters to be considered for redistricting and charged the Mississippi Judicial College of the University of Mississippi Law Center with gathering and analyzing the data.[601] That report of statistics and comments gathered from the forty court districts was filed with the 1985 Legislature.[602] In 1985, the legislature, in "redistricting," abolished legislatively determined terms of court, repealed all the repealers in the laws creating new judgeships from 1977 through 1982,[603] and reenacted the forty chancery and circuit districts *exactly as they had been.*[604]

There were, however, a few statutory conditions that remained. The cost associated with the third chancellor in District Sixteen was to be borne exclusively by Jackson County.[605] Chancery District Eleven would elect a resident of Yazoo or Holmes County to Place One and a resident of Madison or Leake County to Place Two.[606] In regard to the Twentieth Circuit Court District, Place Two was to be filled by a resident of Madison County; however, this provision was repealed automatically on December 31, 1989.[607] In Circuit Court District Four, judges will be elected district wide, but Place One will be a resident of Sunflower County, Place Two of Washington County, and Place Three of either Leflore or Holmes counties.[608] In the Eleventh Circuit Court District, Place One shall be filled by a resident of Coahoma or Quitman County, while the judge in Place Two shall be a resident of Bolivar or Tunica County.[609] Also, in 1985, the legislature mandated a

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600. MISS. CONST. art. 6, § 152 note.

601. Act of Apr. 26, 1984, ch. 443, 1984 Miss. Laws 229 (codified at MISS. CODE ANN. §§ 9-5-3, 9-7-3 (Supp. 1984)).

602. THE MISSISSIPPI JUDICIARY COLLEGE, REPORT TO THE LEGISLATURE: ANALYSIS OF THE NEEDS OF THE CHANCERY AND CIRCUIT COURT DISTRICTS BY THE COURT PERSONNEL AND REPORT TO THE LEGISLATURE: A COMPILATION OF CASELOAD STATISTICS AND OTHER DATA CONCERNING THE CHANCERY AND CIRCUIT COURTS (James T. McCafferty ed., 3d ed. 1985).

603. Act of Apr. 11, 1985, ch. 502, 1985 Miss. Laws 557 (codified at MISS. CODE ANN. §§ 9-5-3 to -57, 9-7-3 to -53 (Supp. 1985)).

604. Act of Apr. 11, 1985, Ch. 502, 1985 Miss. Laws 557 (codified at MISS. CODE ANN. §§ 9-5-3 to -57, 9-7-3 to -54 (Supp. 1985)). With the 1990 census, the redistricting mandate again looms on the horizon. Former Justice James L. Robertson is not optimistic about the prospect:

> The Federal Government has now reported the official 1990 census. There is no getting around the clear wording of the Constitution which says that the Legislature shall redistrict. Still, it will not shock me if nothing has happened by 1995, in which event the task will be back in the Supreme Court. It is incumbent upon the Bar and the Conference of Circuit and Chancery Judges to make every good faith and diligent effort to assist the Legislature in responding to what the Constitution requires.

James Robertson, *Judicial Redistricting: the Supreme Court's Role*, THE MISS. LAW. Apr.-May 1992, at 20.

605. Act of Apr. 11, 1985, ch. 502, § 46, 1985 Miss. Laws 557, 570 (codified at MISS. CODE ANN. § 9-5-50 (Supp. 1985)).

606. Act of Apr. 11, 1985, ch. 502, § 45, 1985 Miss. Laws 557, 569 (codified at MISS. CODE ANN. § 9-5-38 (Supp. 1985)).

607. Act of Apr. 11, 1985, ch. 502, § 57, 1985 Miss. Laws 557, 576 (codified at MISS. CODE ANN. § 9-7-54 (Supp. 1985)).

608. Act of Apr. 11, 1985, ch. 502, § 48, 1985 Miss. Laws 557, 571 (codified at MISS. CODE ANN. § 9-7-17 (Supp. 1985)).

609. Act of Apr. 11, 1985, ch. 502, § 53, 1985 Miss. Laws 557, 574 (codified at MISS. CODE ANN. § 9-7-34 (Supp. 1985)).

county court in every county having 50,000 or more in population whether or not a county court had been historically present.[610]

One might suppose that all of the necessary changes had been made to ensure that the 1986 judicial races would run smoothly with the court system in its most stable and adequate posture in years. However, such was not to be. Those elections were not held until 1989 because of a lawsuit in federal court objecting to district wide elections in multi-judge districts on the basis that black voting strength is thereby diluted and blacks are unable to be elected as judges.[611]

The federal district court concluded "as a matter of law that Section 2 [of the Voting Rights Act] applies to judicial elections."[612] The court found no discriminatory purpose in the large size of judicial districts but rather that the size related to caseload and that limiting the number of districts was based on valid policy.[613] A further conclusion was that there is no discrimination *per se* in majority vote requirements and a post system for judges.[614]

In order to find that multi-member districts impair the ability of voters in minority posture in the population to elect candidates, three factors must be present: (l) a geographically compact group, (2) a politically cohesive group, and (3) majority votes sufficient, by block voting, to defeat the minority's preferred candidate.[615] The court found that only in a few districts did those three factors converge. Relief was granted only in the Fifth, Seventh, Ninth, and Eleventh Chancery Court Districts; the Fourth, Seventh, and Eleventh Circuit Court Districts; and in Hinds County Court.[616]

Though the case was tried in the summer of 1987 and additional hearings were held in 1988,[617] it was early fall of 1988 before the court devised a plan for eliminating the problem by setting forth subdistrict lines and calling for the removal of the orders enjoining judicial elections.[618] The 1986 judicial primaries were held

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610. Act of Apr. 11, 1985, ch. 502, § 60, 1985 Miss. Laws 557, 578 (codified at MISS. CODE ANN. § 9-9-1 (Supp. 1985)).

611. Martin v. Allain, 658 F. Supp. 1183 (S.D. Miss. 1987).

612. *Id.* at 1200.

613. *Id.* at 1196.

614. *Id.*

615. *Id.* at 1197.

616. *Id.* at 1204.

617. *The Voting Rights Act and Judicial Elections: An Update on Current Litigation*, 73 JUDICATURE 74, 80 (1989).

618. Martin v. Mabus, 700 F. Supp. 327 (S.D. Miss. 1988). The court plan provided a 60% black majority in the sub-districts to show that black candidates, in other elections from Congress down to Alderman, had been successful in elections with 60% or less.

> Plaintiffs sought to guarantee election of black candidates in some subdistricts [by creating super-majority subdistricts] but Section 2 [of the Voting Rights Act] only allows for an equal opportunity to elect rather than a guarantee.

Id. at 336.

The court found that in making sub-districts contiguous and compact, it would still use common dividers such as highways and governmental boundaries as much as possible. Because judges serve the whole district, no candidate was required to live in the sub-district in which he ran, but a residency requirement in the whole district was maintained. *Id.* at 332. On October 11, 1988, the court issued an order clarifying its opinion of September 12, 1988, to take into account recent precinct line changes, etc. *Id.* at 348.

on April 4, 1989, and the general elections on June 20, 1989, with winning candidates' terms beginning on July 3, 1989.[619] No sooner had those candidates taken office than they had to begin campaigning for the regular 1990 elections for terms beginning January 1, 1991.[620] The three election districts for supreme court justices were also challenged on similar grounds.[621] The federal district court found that, among other things, the ability of blacks to be elected to the supreme court in hotly contested campaigns negated the claim of diluted voting strength for minorities.[622]

D. Judicial Nominating Commission

Although the Judiciary Commission recommended no legislation in regard to judicial selection, it did recommend specific areas in which further study should be done:

> [A] study should be made as to the best way to provide nominations from which appointments by the Governor can be made to vacancies and unexpired terms in order to insure that gubernatorial appointments are made from the best qualified members of the bar. Further, a study should be made of the "merit system" of selecting judges as recommended by the American Bar Association. Many states have adopted this system. In some respects it combines the better elements of both the elective and appointive systems.[623]

In attempting to show that the Mississippi "voter-elected" judiciary was really more of an "exclusively-appointed" judiciary, the Judiciary Commission revealed the following chart which this author has updated from 1969 to 1992 from the records of commissions in the office of the Secretary of State of Mississippi.

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619. *Id.* at 345. "Such successful candidates shall hold office until their successors are duly elected in the next regularly scheduled judicial elections called for under the laws of the State of Mississippi and sworn into office on the date required by law." *Id.*

620. MISS. CODE ANN. § 23-15-1015 (Supp. 1986) (derived from § 23-5-235, *repealed by* Act of Apr. 16, 1986, ch. 495, 1986 Miss. Laws 773).

621. Magnolia Bar Ass'n v. Lee, 793 F. Supp. 1386 (S.D. Miss. 1992).

622. *Id.*

623. MISS. JUDICIARY COMM'N, *supra* note 6, at 66.

1949-1991 Judicial Appointment by Governor

*(for unexpired term or new judgeship created)**

Term	Supreme Court	Circuit Court	Chancery Court	County Court	Total Appts.
1948-51	5	1	5	0	11
1952-55	2	1	8	5	16
1956-59	0	1	2	4	7
1960-63	3	4	5	0	12
1964-67	1	2	6	4	13 [624]
1968-71	1	11	7	6	24
1972-75	1	5	6	2	14
1976-79	3	10	5	3	21
1980-83	2	5	4	5	16
1984-87	4	10	6	2	22
1988-91	2	7	5	4	18 [625]

*This does not include special appointments during the disability of a sick or aging judge which, in most cases, would give the candidate who has served as special judge a distinct advantage, almost as if he had been an "incumbent."

In 1980, Governor William F. Winter established the Judicial Nominating Committee,[626] made up of nineteen persons to consider proposed nominees and applicants for any judicial post that became vacant and to make a recommendation of three qualified candidates.[627] The Committee made proposals, and the Governor appointed judges from those lists in one county and two circuit court posts during its first year.[628] The initial Committee was composed of the following members:

Central District
Frank Hunger, Greenville
Mary Libby Payne, Pearl
James A. Peden, Jr., Jackson
Frank D. Stimley, Jackson
George L. Thornton, Kosciusko
Jack A. Travis, Jackson

624. MISS. JUDICIARY COMM'N, *supra* note 6, at 66.

625. STATE AND COUNTY OFFICIALS REGISTER OF COMMISSIONS 1968-1972, 1972-1976, 1976-1980, 1980-1984, 1984-1988 and 1988-1992.

626. Exec. Order No. 334 (Aug. 27, 1980) (located in the Miss. Secretary of State Office).

627. *Id.*

628. Letter from James Hugh Ray, Chairman, Judicial Nominating Committee (Aug. 19, 1981) (on file with author).

Northern District
James Hugh Ray, Chairman, Tupelo
Robert W. Elliott, Ripley
Pat D. Holcomb, Clarksdale
William H. Liston, Winona
James McClure, Sardis
James D. Minor, Oxford
Orma R. Smith, Jr., Corinth

Southern District
J. Walter Brown, Jr., Natchez
Eugene L. Fair, Hattiesburg
Earnest W. Graves, Laurel
Sherman L. Muths, Gulfport
Ralph L. Peeples, Brookhaven
David R. Smith, Poplarville[629]

Governor Winter chose this group from plaintiff's lawyers, defense lawyers, rural as well as urban areas, minorities, women, and both laws schools, each member having been active in judicial administration issues prior to appointment.[630] William J. Cole, III, of the governor's staff was assigned *ex officio* to work with the group as Secretary.[631]

Governor Bill Allain continued to utilize the recommendations of a Judicial Nomination Committee in making judicial appointments. Governor Ray Mabus changed the makeup of the new Judicial Nominating Committee[632] so that the governor would appoint three persons from each supreme court district who may be laymen or lawyers and would appoint three lawyers from each supreme court district from a list of persons recommended by the president of the bar.[633] They "shall endeavor to create and to maintain a nominating commission whose membership is not limited to a particular race, sex, or interest group."[634] There shall be three nominees for trial judge and five for supreme court appointments.[635] The governor maintains the right to reject any recommendations of the Committee.[636] For the period 1980 through 1991, fifty-six persons were appointed to fill vacancies through the judicial nominating committee process.[637] Governor Fordice, who

629. *Id.*
630. *Id.*
631. *Id.*
632. Exec. Order No. 587 (Mar. 18, 1988) (located in the Miss. Secretary of State Office).
633. *Id.*
634. *Id.* § 2(c).
635. *Id.*
636. *Id.* §§ 11, 12, 17.
637. *See* chart *supra* part II.D.

took office in 1992, has not utilized the judicial nominating committee mechanism in his appointments.[638]

E. Revisions of the Justice of the Peace Court System

The Judiciary Commission found a justice of the peace court system with as many as ten justices of the peace in numerous counties, about half of them making less than $1000 a year.[639] Audits of the justice of the peace offices were years behind, and no educational requirements encumbered candidates.[640] The fee system, which was fraught with opportunities for abuse in both civil and criminal matters, generated the only funds for the operation of an office and income to the judge and his constable.[641] In 1970, even the bill to put a penalty in the law for not using the already required uniform receipts created enormous opposition and was defeated in 1970.[642] It is no wonder the recommendations to limit the number of,[643] set salaries for,[644] and require a high school diploma for[645] justices of the peace bit the dust as well.

1. Constitutional and Statutory Changes

Changes have been made, some at the urging of justices of the peace themselves, in an attempt to respond to public dissatisfaction and to make their group more professional.[646] No legislation affecting the justice court system was passed in the years 1970 through 1973, but in 1974, the legislature passed two major improvements. The first, passed more than one year before the 1975 general election, reduced the number of justices of the peace to the original five per county or one per supervisor's district.[647]

There was an exception for DeSoto County, which had no county court and was in the rapid growth area around Memphis, Tennessee.[648] It was allowed to add an additional justice of the peace per district, but the authority for those additional posts would terminate on December 31, 1979,[649] allowing DeSoto County an

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638. Interview with Professor Judith Johnson, Chair, Miss. Bar Committee, on Judicial Selection, at Jackson, Miss. (July 24, 1992).

639. MISS. JUDICIARY COMM'N, *supra* note 6, at 59.

640. Even though a candidate did not have to be able to read or write to run for office and be elected, in 1964, the legislature had mandated that, beginning January 1, 1968, no one would be eligible to take the oath of office for Justice of the Peace until he had completed an 18-hour course taught by the Attorney General or his designee. Act of June 11, 1964, ch. 330, 1964 Miss. Laws 467 (codified at MISS. CODE ANN. of 1942 § 1803.2 (Supp. 1964)) (current version at MISS. CODE ANN. § 9-11-3 (1972)).

641. MISS. JUDICIARY COMM'N, *supra* note 6, at 58-59.

642. H.R. 415, Reg. Sess., 1970 Miss. House J. 256-57 (died on Senate floor, 1970 Miss. Senate J. 871).

643. H. Con. Res. 37, Reg. Sess., 1970 Miss. House J. 495; H.R. 418, Reg. Sess., 1970 Miss. House J. 176.

644. H.R. 421, Reg. Sess., 1970 Miss. House J. 176.

645. H.R. 419, Reg. Sess., 1970 Miss. House J. 176.

646. MISS. JUDICIARY COMM'N, *supra* note 6, at 57.

647. Act of Apr. 2, 1974, ch. 497, 1974 Miss. Laws 624 (codified at MISS. CODE ANN. § 9-11-1 (Supp. 1974)).

648. *Id.*

649. Act of Apr. 2, 1974, ch. 497, § 2, 1974 Miss. Laws 624, 625 (codified at MISS. CODE ANN. § 9-11-1 (Supp. 1974)).

additional term to maintain this status quo.[650] In 1975, exceptions were passed for Hinds County, or any county having a population in excess of 200,000 according to the 1970 census[651] and for Panola County, wherein State Highway 6 intersects with Interstate Highway 55, in the supervisor's district in which there are two county seats.[652] It was not until 1981, however, that the legislature adopted any population-related scale for the number of such judges[653] and that was caused by an outside impetus that is discussed *infra*.

The second major victory in regard to the improvement of the administration of justice in justice of the peace court in 1974 was the absolute requirement of the prepayment of court costs at the time of filing a civil case.[654]

> No justice of the peace court shall have jurisdiction over any civil suit attempted to be filed therein unless and until all legally required court costs, as set out, but not restricted to, sections 25-7-25 and 25-7-27, Mississippi Code of 1972, are deposited with the court. The justice of the peace shall not file, docket, issue process, or otherwise assume jurisdiction until such costs shall have been paid.
>
> Any violation shall constitute a misdemeanor wherein the county court, or in the absence of a county court, the circuit court shall have jurisdiction. Upon conviction the justice of the peace shall be fined not less than one hundred dollars ($100.00) nor more than two hundred fifty dollars ($250.00).[655]

Of course, had justices of the peace not relied on fees for their income, this requirement might not have been so crucial. The Commission, in 1970, had assessed the condition as follows:

> It is to the advantage of the justice of the peace and the constable (both on the fee basis) to do a volume business. Therefore, litigation is encouraged with the plaintiff (creditor) often being assured that the suit will cost him nothing since the costs will be collected from the defendant, who may owe less than the court costs when sued. Under the present system, if a justice of the peace demands that his costs be paid in advance on every case, the creditor can take his accounts and go to another competing justice of the peace in the district, or even to one in another district. With no one to object but the uninformed debtor, the creditor has little concern about venue or jurisdiction. Competition among J. P.'s for judicial business should be eliminated.[656]

The most significant legislatively initiated change in the office of the justice of the peace came in 1975 with the passage of a constitutional amendment to Section

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650. *Id.*

651. Act of Mar. 10, 1975, ch. 340, 1975 Miss. Laws 442 (codified at MISS. CODE ANN. § 9-11-1 (Supp. 1975)).

652. Act of Mar. 27, 1975, ch. 423, 1975 Miss. Laws 564 (codified at MISS. CODE ANN. § 9-11-2 (Supp. 1975)).

653. Act of Apr. 7, 1981, ch. 471, § 8, 1981 Miss. Laws 1266, 1274 (codified at MISS. CODE ANN. § 9-11-2 (Supp. 1981)).

654. Act of Mar. 11, 1974, ch. 329, 1974 Miss. Laws 378 (codified at MISS. CODE ANN. § 9-11-10 (Supp. 1974)).

655. *Id.*

656. MISS. JUDICIARY COMM'N, *supra* note 6, at 59.

171[657] in which several reforms proposed by the justices of the peace themselves were placed, namely:

1. The name was changed from "justice of the peace" with all its old, bad connotations to "justice court judge" to imply real judicial decorum and professionalism;
2. The number was reduced to not less than two per county;
3. A high school diploma or equivalency was required unless one had served or been elected to the justice of the peace office prior to 1976 (so that the education qualification would only apply to new candidates for the office in the 1979 general elections, but the name change would apply to those elected in 1975);
4. The civil jurisdictional amount which had remained $200 since before the War Between the States was raised to $500.00 "or such higher amount as may be prescribed by law;" and
5. Everywhere in the Mississippi Code where the term "justice of the peace" is used it will be construed to mean "justice court judge."[658]

In 1977, the legislature passed a law setting the civil jurisdictional amount at $500 to conform to the 1975 amendment.[659] Neither 1976 nor 1978 saw any legislation on justice courts, but in 1979, the year for election of justice court judges, several changes were made. First, each justice court judge was authorized, but not mandated, to appoint, at his own expense, a clerk to file and docket actions and pleadings, to receive and give a receipt for monies, and to acknowledge affidavits.[660] Second, the fees were raised so justices could afford the improvements.[661] Third, a stringent financial penalty was placed on those justice court judges who did not provide an appropriate office space for performing their functions of this judicial office.[662] It stated:

> (2) The fees provided for in Section 25-7-25, Mississippi Code of 1972, shall not be collected by a justice court judge who does not maintain a listed telephone and an appropriate office space which is reasonably accessible to the public for conducting judicial proceedings, filing actions and pleading and issuing summons.
> Section 3. This act shall take effect and be in force from and after . . . January 1, 1980, as to Section 2 hereof.[663]

Late in 1979, the Mississippi Judicial Council, in making its recommendations to the legislature, took a bold step in recommending that justice courts be

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657. H.R. Con. Res. 11, Reg. Sess., Act of Mar. 28, 1975, ch. 518, 1975 Miss. Laws 840.

658. Act of Mar. 28, 1975, ch. 518, 1975 Miss. Laws 840. By the amendment to Section 171, the Mississippi Constitution violates its own mandate of Section 61 to amend a law only by inserting it at length. But as legislators have been known to say jokingly, "What's the constitution among friends?"

659. Act of Feb. 24, 1977, ch. 308, 1977 Miss. Laws 434 (codified at MISS. CODE ANN. § 9-11-9 (Supp. 1977)).

660. Act of Mar. 20, 1979, ch. 409, 1979 Miss. Laws 709 (codified at MISS. CODE ANN. § 9-11-27 (Supp. 1979)).

661. Act of Apr. 3, 1979, ch. 476, 1979 Miss. Laws 926 (amending MISS. CODE ANN. § 25-7-25).

662. Act of Apr. 3, 1979, ch. 476, § 2(2), 1979 Miss. Laws 926, 927 (amending MISS. CODE ANN. § 9-11-5 (Supp. 1979)).

663. *Id.*

abolished and a magistrate system within the present circuit court structure be established in its place.[664] A study commissioned by the Judicial Council claimed that such a restructuring would save over one million dollars a year.[665] Though this recommendation solidified the justice court judges against the continuation of the Judicial Council,[666] the favorable response to it by business and professional organizations alike, evidenced the frustration that had been festering throughout the state. One editor wrote:

> The Mississippi Retail Merchants Association has become yet another rivulet in the cascade of business, civic and political groups that think Mississippi's justice courts should go the way of the dinosaurs . . . . The merchants join the Mississippi Judicial Council, the Mississippi Economic Council, the Mississippi Bar Association, the Young Lawyers Association of Mississippi, the Federal Bar Association's state chapter and Common Cause, each of which has asked the Legislature for justice-court reforms. The Legislature, and its leaders, should heed the reformers' plea.[667]

Despite the enormous publicity given the Judicial Council's proposal, the recommendation did not pass.[668]

2. Federal Case Law

Although no legislation in regard to the new justice court judges was passed in 1980, on the horizon a new day was beginning to dawn that would revolutionize the small claims courts in Mississippi more than the cumulation of all the legislation of the century. In the early 1970s a case had been brought in federal court that attacked the structure of the justice court system as being unfair because judges were compensated by fees paid by the litigants in civil claims.[669] In the federal district court, that case had upheld the fee system except for prohibiting an *additional* fee for execution, attachment, or garnishment proceedings in the same case.[670] The decision was appealed.

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664. MISS. JUD. C., *supra* note 77.

665. *Judicial Reform*, LEADER CALL (Laurel, Miss.), Dec. 22, 1979, at 4.

666. *Justice in Mississippi*, COMMERCIAL APPEAL (Memphis, Tenn.), Dec. 28, 1979, at 6.

667. *Consensus on Justice Court Grows*, CLARION-LEDGER (Jackson, Miss.), Feb. 4, 1980, at 4B.

668. *Another Boost for Magistrates*, MISSISSIPPI PRESS (Pascagoula, Miss.), Jan. 30, 1980, at 8A; *A Change Needed In Justice Court System*, GREENWOOD COMMONWEALTH (Greenwood, Miss.), Dec. 25, 1979, at 12; *Consensus on Justice Courts Grows*, CLARION-LEDGER (Jackson, Miss.), Feb. 4, 1980, at 4B; *Get Rid of JP's*, CAPITAL REPORTER (Jackson, Miss.), Feb. 7, 1980, at 2; *Judicial Reform*, LEADER CALL (Laurel, Miss.), Dec. 22, 1979, at 4; *Justice in Mississippi*, COMMERCIAL APPEAL (Memphis, Tenn.), Dec. 28, 1979, at 6; *Lower Level Courts Need Improvements*, SOUTH MISSISSIPPI SUN (Biloxi-Gulfport, Miss.), Dec. 26, 1979, at 1A; Doug Davis, *Magistrate System Step Forward*, NATCHEZ DEMOCRAT (Natchez, Miss.), Jan. 3, 1980, at 4B; *Promising Plan to Improve Justice*, CLARION-LEDGER (Jackson, Miss.), Dec. 20, 1979, at 4B; *Replacing Justice Courts Proposed*, ENTERPRISE JOURNAL (McComb, Miss.), Dec. 28, 1979, at 2.

669. Brown v. Vance, 637 F.2d 272 (5th Cir. 1981).

670. Brown v. Vance, No. 72J-91(N) (S.D. Miss. 1978) (unpublished). For a good discussion of the district court opinion, see G. Dan Stewart, Note, *Constitutional Law – The Fee System of Justice Court Judges: Violative of Fourteenth Amendment Due Process?*, 1 MISS. C. L. REV. 309 (1979).

When the Fifth Circuit ruling[671] came down on January 30, 1981, holding the fee system in all cases unconstitutional, it threw the state into a crisis of enormous proportion.[672] Though it did not abolish justice courts, it took away all right to compensation for the operation of them. It came also during the legislative session after the deadline for the introduction of new bills or constitutional amendments.[673]

3. Statutory Revision in Reaction to Federal Case Law

In fact, on February 13, 1981, HCR 57 was introduced by Representatives Stennis, Barefield, and Merideth to suspend the rules in regard to deadlines to allow the introduction of a bill to revise the justice courts.[674] The rules suspension resolution was passed on Friday, February 13, 1981.[675] A special ad hoc committee of the Young Lawyers Section of the Mississippi State Bar worked diligently to produce the legislation for introduction.[676]

The legislature adopted a long piece of legislation to act as an emergency stopgap measure and a foundation for the orderly transition.[677] The refinement came in 1982[678] which continued and added to the interim requirements to apply during that term, but established for 1984 and following years the permanent laws under which justice courts would be operated.[679]

The justice of the peace has always had jurisdiction "coextensive with his county,"[680] but cases could be brought in his particular district if the defendant lived there or if "the debt was contracted, the liability incurred, or . . . the property may be found" there.[681] The Judiciary Commission had found that this provision had aided "forum shopping" in all suits brought on debts incurred from

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671. Brown v. Vance, 637 F.2d 272 (5th Cir. 1981).

672. *Justice Courts*, THE MISS. LAW., Mar.-Apr. 1981, at 32.

673. The deadline for introduction of bills was January 22, 1981 (the 16th calendar day of the session); *Brown v. Vance* was decided January 30, 1981. *See* 1981 Miss. House J. 39.

674. H.R. Con. Res. 57, Act of Feb. 19, 1981, ch. 545, 1981 Miss. Laws 1670 (1981 Miss. House J. 396).

675. 1981 Miss. House J. 398.

676. *Justice Courts*, THE MISS. LAW., Mar.-Apr. 1981, at 32. H.R. Bill. 1343 was introduced on February 24, 1981, by Representatives Stennis, Barefield, Merideth, Ford, King, Melancon, Nipper, Walman, and Young. 1981 Miss. House J. 464.

677. Act of Apr. 7, 1981, ch. 471, 1981 Miss. Laws 1266.

678. Act of Mar. 31, 1982, ch. 423, 1982 Miss. Laws 387 (§§ 9-11-1, 9-11-19, 9-11-27, 11-9-101, 11-9-105, 11-9-113, 11-11-17, 11-25-5, -7, -11, -13, -17, -19, -21, -23, 11-51-85, 21-23-5, 25-1-31, 25-3-36, 25-7-25, 63-9-21, 99-33-2, -3, 99-33-1 (all amending same)).

679. *Id.*

680. MISS. CODE ANN. § 11-9-101 (1972).

681. *Id.*

purchases from a large retailer.[682] Those claims would be "funnelled" into the court of the justice of the peace in the neighborhood of that store.[683]

Therefore, the Judiciary Commission had recommended: "In civil suits a defendant must be sued in the district of his residence only and not where the debt was incurred."[684] Although the federal court did not speak directly to the question of venue, it did condemn forum shopping with volume business so that the legislature properly responded by establishing the place of residence for a Mississippian as the only proper place to bring suit against him.[685]

To insure the enforcement of the change, the legislature provided that actions brought in the wrong *district* would be dismissed without prejudice upon motion of the defendant, but the plaintiff, who had been required to advance court costs upon filing,[686] would forfeit all costs.[687] From and after April 1, 1982, or earlier in those counties that elected to pay justice court judges a salary, the jurisdiction of the justice court judge would be county wide, and "he may direct the clerk of the justice court to issue any process in matters within his jurisdiction, to be executed in any part of the county. Every defendant shall be sued only in the *county* in which he resides," with provision made for out-of-state-resident process.[688]

In 1981, the jurisdictional amount in controversy was raised from the 1977 figure of $500 to $1000,[689] but the amount was to drop back to $500 on July 1, 1985.[690] In the 1985 session that date was moved to July 1, 1986.[691] The next year the provision calling for the reduction of the jurisdictional amount to $500 was

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682. MISS. JUDICIARY COMM'N, *supra* note 6, at 58.

> Civil creditors, especially large businesses, are able to exert entirely too much economic pressure over a justice of the peace who must rely on court costs for his livelihood. Moreover, some creditors file claims with justices of the peace when summons has to be sent outside the county to be served. Even if the J.P. recognizes the invalidity of such an action and mentions it, the creditor may insist that it be processed anyway, knowing that an uninformed defendant might never know the difference and pay the debt, including court costs, on a void judgment. The justice of the peace is naturally under great pressure to not turn down this "business" for fear of losing all that creditor's civil suits, on each one of which he is entitled to a $5.00 fee.

MISS. JUDICIARY COMM'N, *supra* note 6, at 58.

683. MISS. JUDICIARY COMM'N, *supra* note 6, at 58.

684. MISS. JUDICIARY COMM'N, *supra* note 6, at 61.

685. Act of Apr. 7, 1981, ch. 471, § 1(1), 1981 Miss. Laws 1266, 1277 (codified at MISS. CODE ANN. § 11-9-101 (Supp. 1981)).

686. MISS. CODE ANN. § 9-11-10 (1972).

687. Act of Apr. 7, 1981, ch. 471, § 1(2), 1981 Miss. Laws 1266 (codified at MISS. CODE ANN. § 11-9-101 (Supp. 1981)).

688. Act of Apr. 7, 1981, ch. 471, § 1(5), 1981 Miss. Laws 1266, 1268 (codified at MISS. CODE ANN. § 11-9-101 (Supp. 1981)). It should be noted that the 1992 Legislature amended MISS. CODE ANN. §§ 11-9-101 and -103 so that the defendant may be sued only in the county of his residence "or where the cause of action arose." Act of Apr. 27, 1992, ch. 389, 1992 Miss. Laws 192 (codified at MISS. CODE ANN. §§ 11-9-101, -103). The reform lasted only a decade, but the evil it was designed to eliminate is not as present with cases being assigned by a clerk. It is definitely a boon to major creditors to be able to sue all their debtors in the county of their major business outlet.

689. Act of Apr. 7, 1981, ch. 471, § 4, 1981 Miss. Laws 1266, 1269 (codified at MISS. CODE ANN. § 9-11-9 (Supp. 1981)).

690. *Id.*

691. Act of Apr. 9, 1985, ch. 478, 1985 Miss. Laws 466 (codified at MISS. CODE ANN. §§ 9-11-9, 99-23-13 (Supp. 1985)).

deleted from the law, thereby unquestionably establishing $1000 as the limit of justice court jurisdiction.[692] Ever since 1926, when the first county court was established,[693] the county court had concurrent jurisdiction with the justice of the peace court and with the circuit and chancery courts in matters of law and equity up to a specific jurisdictional amount.[694] While justice of the peace jurisdiction had remained $200 until 1977, county court jurisdiction rose incrementally from its initial $1000 to $25,000 in 1984.[695] Therefore, the justice court increase was not inconsistent with the legislative actions concerning county courts.

The most crucial part of the 1981 legislation, to the justice court judges at least, was that provision for salaries.[696] In 1981, the salaries were scaled by population from a minimum of $2500 for counties of less than 8000 persons to a maximum of $30,000 for counties of more than 200,000 in population.[697] Even though those salaries were not to take effect until January 1, 1984, or at such earlier time as the county elected to compensate justice court judges, in 1982 the legislature reworked the salary scale, creating additional categories for counties on the lower end of the population spectrum and causing the salaries to run from a minimum of $3000 to a maximum of $28,500.[698] That section has been amended six times since then so that the justice court minimum salary now is $7500 and the maximum is $36,600 per year.[699]

At the same time that salaries were set, the number of justice court judges per county was reduced to no more than two in counties with a population of 35,000 or less; three in counties with population between 35,000 and 70,000; four in counties with population over 70,000 but less than 150,000; and five in counties

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692. Act of Mar. 20, 1986, ch. 365, 1986 Miss. Laws 126 (codified at MISS. CODE ANN. § 9-11-9 (Supp. 1986)).

693. Act of Feb. 25, 1926, ch. 131, 1926 Miss. Laws 218 (amended 1948).

694. MISS. CODE of 1930, § 693; MISS. CODE ANN. of 1942, § 1604; MISS. CODE ANN. § 9-9-21 (1972).

695. Act of Apr. 13, 1984, ch. 348, 1984 Miss. Laws 72 (codified at MISS. CODE ANN. § 9-9-21 (Supp. 1984) (amended 1991)). For progression of increases, see: Act of Feb. 25, 1926, ch. 131, 1926 Miss. Laws 218 (amended 1948) ($1000); Act of Apr. 13, 1948, ch. 236, 1948 Miss. Laws 209 (amended 1962) ($3000); Act of May 16, 1962, ch. 300, 1962 Miss. Laws 538 (amended 1964) ($8000); Act of Mar. 12, 1964, ch. 322, 1964 Miss. Laws 436 (amended 1984) ($10,000); Act of Apr. 13, 1984, ch. 348, 1984 Miss. Laws 72 (amended 1991) ($25,000); Act of Mar. 15, 1991, ch. 311, 1991 Miss. Laws 47 (codified at MISS. CODE ANN. § 9-9-21 (Supp. 1991)) ($50,000).

696. *See* MISS. CODE ANN. § 25-3-36 (Supp. 1981).

697. Act of Apr. 7, 1981, ch. 471, § 5, 1981 Miss. Laws 1266, 1270 (codified at MISS. CODE ANN. § 25-3-36 (Supp. 1981)).

698. Act of Mar. 31, 1982, ch. 423, § 4, 1982 Miss. Laws 387, 390 (codified at MISS. CODE ANN. § 25-3-36 (Supp. 1982)).

699. Act of Nov. 19, 1983, ch. 7, § 2, 1983 Miss. Laws 2d Extraordinary Sess. 17, 18 (codified at MISS. CODE ANN. § 25-3-36 (Supp. 1983)); Act of May 15, 1984, ch. 502, § 5, 1984 Miss. Laws 695, 696 (codified at MISS. CODE ANN. § 25-3-26 (Supp. 1984)); Act of Mar. 20, 1985, ch. 365, 1985 Miss. Laws 116 (codified at MISS. CODE ANN. § 25-3-36 (Supp. 1985)); Act of May 4, 1988, ch. 502, 1988 Miss. Laws 524 (codified at MISS. CODE ANN. § 25-3-36 (Supp. 1988)); Act of Apr. 15, 1991, ch. 594, § 2, 1991 Miss. Laws 1121, 1121 (codified at MISS. CODE ANN. § 25-3-36 (Supp. 1991)); Act of May 6, 1992, ch. 476, § 1, 1992 Miss. Laws 505, 505 (codified at MISS. CODE ANN. § 25-3-36 (1992)).

of 150,000 or more in population.[700] Therefore, the number of justice court judges has decreased from an excess of 500[701] to 191 in 1984.[702]

Other things that have improved the operation and image of justice court administration include the provision of salaried clerks,[703] the requirement of uniform case dockets,[704] the provision of courtrooms,[705] the requirement of regular terms of court,[706] the designation of the clerk as the official to deal with funds received in the court,[707] and the requirements of orientation training and continuing annual training of both judges and clerks.[708] The responsibility for such training was placed with the Mississippi Judicial College that had been furnishing court education for personnel in the appellate and trial courts since 1971.[709] Prior to 1981, the responsibility for justice court training had been assigned to the attorney general.[710] With ample funding from the State Court Education Fund by assessments on filing fees,[711] the Mississippi Judicial College is able to maintain permanent staff adequate to conduct annual training programs and to defray the costs of attendance.

With the counties being charged with the task of providing the supplies and support personnel for the justice court office and operation, a historic problem disappeared. The issue of forum shopping became moot when the clerk was charged with the duty of assigning cases, criminal as well as civil, on a rotating basis.[712]

Public discontent with the justice court seems to have lessened. Although the judges who have been removed from office because of action of the Commission on Judicial Performance have come mainly from justice court, the number of complaints against justice court judges has decreased appreciably since the new law took effect in 1984.[713] Though it took well over a decade, the most noticeable change in judicial administration has come in the justice court, the court where the vast majority of citizens has their first and only contact with the system.

Not nearly so dramatically, but just as comprehensively, the law of eminent domain court was revised. In 1971, the legislature removed the justice of the peace

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700. Act of Apr. 7, 1981, ch. 471, § 8, 1981 Miss. Laws 1266, 1274 (codified at MISS. CODE ANN. § 9-11-2 (Supp. 1981)); Act of Nov. 19, 1983, ch. 7, § 1, 1983 Miss. Laws 2d Extraordinary Sess. 17, 17 (codified at MISS. CODE ANN. § 9-11-2 (Supp. 1984)).

701. MISS. JUDICIARY COMM'N, *supra* note 6, at 59.

702. *Justice Court System Reforms Hailed*, CLARION-LEDGER (Jackson, Miss.), Dec. 22, 1985, at H1, H2.

703. MISS. CODE ANN. § 9-11-27 (Supp. 1988).

704. MISS. CODE ANN. § 9-11-11 (Supp. 1985).

705. MISS. CODE ANN. § 9-11-5 (Supp. 1986).

706. MISS. CODE ANN. § 9-11-15 (Supp. 1982).

707. MISS. CODE ANN. §§ 9-11-18, -19, -20, -21, -23 (Supp. 1992). *See Promising Plans to Improve Justice*, CLARION-LEDGER (Jackson, Miss.), Dec. 20, 1979, at A13.

708. MISS. CODE ANN. §§ 9-11-3, -4 (Supp. 1989) (judges); § 9-11-29 (Supp. 1989) (clerks).

709. *See supra* part I.D.

710. MISS. CODE ANN. § 7-5-59 (*repealed by* Act of Apr. 7, 1981, ch. 471, § 58, 1981 Miss. Laws 1266, 1296). Confusion arises here because the Act of May 12, 1988, ch. 511, 1988 Miss. Laws 514 (dealing with white collar crime) has been assigned this same code section number.

711. MISS. CODE ANN. §§ 37-26-1, -3, -9 (Supp. 1991).

712. MISS. CODE ANN. § 11-9-105 (Supp. 1991) (civil); MISS. CODE ANN. § 99-33-2 (Supp. 1991) (criminal).

713. Luther T. Brantley, III, Speech to Mississippi College School of Law Ethics class (Apr. 9, 1992).

entirely from trial of eminent domain cases.[714] County courts, and in counties without them, circuit courts, were granted jurisdiction over the trial of such cases.[715]

F. Youth Court Reforms

1. Statutes

The Judiciary Commission recommended lowering the jurisdictional age of the youth court from eighteen to sixteen to reduce the crisis in workload.[716] Several members and this author felt that was the worst way to address the problem and were glad it was not passed by the legislature. Many of the other recommendations were favorably considered in later years. Providing for the appointment and compensation of defense counsel for youths was accomplished in 1971.[717] Also in 1971, the 1966 amendments giving justices of the peace jurisdiction over youths in riot situations were deleted, restoring to the youth court exclusive jurisdiction over any delinquent, neglected, or battered child.[718]

Thereafter, the legislature provided for any records on youthful offenders in any municipal or justice of the peace courts to be expunged and the matters transferred to youth court, unless prosecution in the original court is permitted by order of the youth court.[719] The 1971 act for the first time entitled a person subject to youth court jurisdiction to be released on bond.[720] Later, youth court jurisdiction was enlarged to include "a child in need of supervision"[721] and "a dependent child."[722]

The county, identified by the Judiciary Commission as giving the least amount of time per capita to the juvenile offenders brought before the chancery court,[723] received an appreciable amount of relief by a 1975 bill authorizing the creation of a youth court in the newly incorporated city of Pearl.[724] Additional relief was provided by the creation of county courts in additional counties.[725] In 1985, the legislature mandated that after January 1, 1987, a county court would be established in

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714. Act of Apr. 15, 1971, ch. 520, 1971 Miss. Laws 794 (codified at MISS. CODE ANN. §§ 11-27-1 to -51 (Supp. 1991)).

715. *Id.*

716. MISS. JUDICIARY COMM'N, *supra* note 6, at 53.

717. MISS. CODE ANN. § 99-15-15 (1972).

718. Act of Mar. 22, 1971, ch. 391, 1971 Miss. Laws 405 (codified at MISS. CODE ANN. § 43-21-7 (1972)).

719. Act of Apr. 12, 1973, ch. 488, 1973 Miss. Laws 661 (codified at MISS. CODE ANN. § 43-21-33 (Supp. 1974)).

720. Act of Mar. 22, 1971, ch. 391, 1971 Miss. Laws 405 (codified at MISS. CODE ANN. § 43-21-7 (1972)).

721. Act of Apr. 16, 1979, ch. 506, § 15, 1979 Miss. Laws 1046, 1053 (codified at MISS. CODE ANN. § 43-21-151 (Supp. 1979)).

722. Act of Apr. 10, 1985, ch. 486, 1985 Miss. Laws 504 (codified at MISS. CODE ANN. §§ 43-21-151 to -613 (Supp. 1985)).

723. MISS. JUDICIARY COMM'N, *supra* note 6, at 51.

724. Act of Mar. 14, 1975, ch. 348, 1975 Miss. Laws 449 (codified at MISS. CODE ANN. § 43-21-3 (Supp. 1975)) (repealed and re-enacted at MISS. CODE ANN. § 43-21-107 (Supp. 1979)).

725. These counties were DeSoto, Lee, Lowndes, and Rankin. *See* SECRETARY OF STATE, MISSISSIPPI JUDICIARY DIRECTORY AND COURT CALENDAR (1992).

any county having in excess of 50,000 inhabitants, so additional county courts will be added automatically.[726]

2. Personnel and Programs

In 1975, five years after the Judiciary Commission identified the need, the legislature added teachers to the list of persons required to report suspected child abuse.[727] Also added were any "psychologist . . . social worker, school principal, child care giver, minister, or any law enforcement officer."[728] In 1977, the list of persons immune from suit who may report child abuse was enlarged to include "attorneys or any other person."[729] The definition of a "battered child" was enlarged in 1975 to "battered and abused [children]"[730] including sexual abuse and any situation where a child's mental health has been adversely affected.[731]

Changes in regard to the formal hearings were made in the 1970s. As procedural abuses were surfacing nationwide, the language stating that dispositions would be heard "in an informal manner,"[732] was replaced by "under such rules of evidence as may comply with applicable constitutional standards."[733] In 1975, the legislature required that where there was a charge of abuse or neglect of a child, the court would appoint a guardian ad litem to represent the child.[734] The court has jurisdiction over adults involved in a youth's delinquency, neglect or abuse.

In 1973, the crime of felonious battery of a child was added.[735] That section was amended to add the offense of "felonious abuse" of a child. The amendment also authorized the judge to suspend sentencing the offender and instead require treatment over a specified period of time, if "consultation with the welfare department, the regional mental health center or an appropriate person" so indicated.[736]

In the latter part of the decade, the Conference of Youth Court Judges decided the waiver statute[737] needed revision. That law prescribed how youths were to be certified to circuit court to be tried as adults.[738] The judges felt it was outdated and

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726. Act of Apr. 11, 1985, ch. 502, § 60, 1985 Miss. Laws 557, 578 (codified at MISS. CODE ANN. § 9-9-1 (Supp. 1985)).

727. Act of Apr. 7, 1975, ch. 494, § 2, 1975 Miss. Laws 738, 740 (amending MISS. CODE ANN. § 43-21-11).

728. *Id.*

729. Act of Apr. 14, 1977, ch. 474, § 2, 1977 Miss. Laws 864, 866.

730. Act of Apr. 7, 1975, ch. 494, § 1, 1975 Miss. Laws 738, 738 (codified at MISS. CODE ANN. § 43-21-5, (Supp. 1975)) (repealed and re-enacted at MISS. CODE ANN. § 43-21-105 (Supp. 1979)).

731. *Id.*

732. MISS. CODE ANN. § 43-21-17 (1972).

733. Act of Apr. 12, 1973, ch. 469, § 2, 1973 Miss. Laws 621, 623 (codified at MISS. CODE ANN. § 43-21-17 (Supp. 1974)).

734. Act of Apr. 7, 1975, ch. 494, § 3, 1975 Miss. Laws 738, 741 (codified at MISS. CODE ANN. § 43-21-17 (Supp. 1975)).

735. Act of Apr. 12, 1973, ch. 469, § 3, 1973 Miss. Laws 621, 623 (codified at MISS. CODE ANN. § 43-21-27 (Supp. 1974)).

736. Act of Apr. 7, 1975, ch. 494, § 4, 1975 Miss. Laws 738, 742 (codified at MISS. CODE ANN. § 43-21-27 (Supp. 1975)).

737. MISS. CODE ANN. § 43-21-33 (1972).

738. MISS. CODE ANN. § 43-21-31 (1972).

appointed a committee to draft an amendment.[739] As the committee worked, it realized the whole act was antiquated.[740] The committee worked eighteen months on drafting an entirely new act to incorporate all of the national standards from *In re Gault*[741] forward.[742] What the drafters tried to do was "take you step-by-step so that with that act you could run a youth court."[743]

In 1979, the legislature repealed the old laws and enacted the "Youth Court Act."[744] Some of it was similar to the old law, but much of it, particularly in regard to transfer, petition, adjudication, disposition, records, custody, and status offenders, stated new guidelines and more detailed requirements.[745] The new procedure of "informal adjustments" was recognized and set forth specifically.[746] Other courts are now recognizing the need for alternative dispute resolution, but it has been operational in Mississippi youth court for over ten years. Dispositional alternatives were set forth in delinquency cases which included such new avenues as treatment, restitution, suspension of a driver's license, alternative placements, and fines.[747] Alternatives were also delineated in cases of children in need of supervision,[748] neglect and abuse cases,[749] and children in need of special care.[750]

The following year, changes in the law were made primarily to clarify the operation of the law, but "the Mississippi Act for two years running won the best piece of legislation in the country" by the National Council of Juvenile and Family Court Judges.[751] One of the major changes in 1980 was to require that children who had to be placed in adult detention centers had to be sufficiently segregated from sight and sound of adult offenders.[752] Even though the Act from as early as 1946 had prohibited placement of youths in jails, there are only a few youth detention facilities within the state,[753] so specific workable rules had to be written for those frequent unavoidable instances where youths had to be detained in adult facilities.

In 1985, the legislature verbalized the national trend by including in the law the requirement that reasonable efforts be made to maintain the child within his own

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739. Interview with Judge Emily Baker, Youth Court Judge for Jackson County since 1975, at the Miss. State Bar Convention at the Biloxi Hilton Hotel in Biloxi, Miss. (June 2, 1988) [hereinafter Baker].

740. *Id.*

741. 387 U.S. 1 (1967).

742. Baker, *supra* note 739.

743. Baker, *supra* note 739.

744. Act of Apr. 16, 1979, ch. 506, 1979 Miss. Laws 1046 (codified at MISS. CODE ANN. §§ 43-21-101 to -27, -151 to -159, -201 to -205, -251 to -267, -301 to -315, -351 to -357, -401 to -407, -451 to -459, -501 to -509, -551 to -561, -601 to -617, -651, 97-5-39 (Supp. 1979)).

745. Baker, *supra* note 739.

746. MISS. CODE ANN. §§ 43-21-401 to -407 (Supp. 1979).

747. MISS. CODE ANN. § 43-21-605 (Supp. 1979).

748. MISS. CODE ANN. § 43-21-607 (Supp. 1979).

749. MISS. CODE ANN. § 43-21-609 (Supp. 1979).

750. MISS. CODE ANN. § 43-21-611 (Supp. 1979).

751. Baker, *supra* note 739.

752. MISS. CODE ANN. § 43-21-315 (Supp. 1980).

753. Baker, *supra* note 739. Those counties are Harrison, Jackson, Lauderdale, Hinds, and Washington. Rankin County opened one in 1993.

home.[754] Courts responded to Public Law 96-272, which mandated permanency planning review to assure that children in custody or foster care did not get "lost" in the system.[755]

The 1979 Act had created the Mississippi Council of Youth Court Judges[756] with the responsibility *inter alia* for preparing an annual report to be submitted to the governor, chief justice, and the Mississippi Judicial Council.[757] Funding was authorized to be received from available funds of the federal government.[758] During the 1980s, the Council of Youth Court Judges ceased to even meet, but it was activated again in the fall of 1987.[759] It now meets semi-annually with the Conference of State Judges, but makes no published reports.[760] In the interim, Chief Justice Neville Patterson established a Juvenile Justice Task Force.[761]

The Task Force meets quarterly and, until 1993, was headed by Dr. Larry Leflore, a Criminal Justice professor at the University of Southern Mississippi.[762] It secures grants for special studies, many of which have been directed at the needs of sexually abused children.[763] It has also studied the effect of detention problems on youths.[764] It was most active from 1990 through 1992 when Judge James Smith of Rankin County was chairman.[765] Donna Perrette of the University of Mississippi succeeded Dr. Leflore as executive director of the Task Force.[766]

In 1988, Chief Justice Roy Noble Lee appointed a committee on children's issues trying to coordinate activities between the cases being handled in chancery, circuit, and youth court so that no one child's circumstances would have him involved in various courts simultaneously.[767] The supreme court put this issue to rest in 1992[768] when it ruled explicitly that the youth court has exclusive jurisdiction over youth in the areas of neglect and abuse.[769]

With statewide funding from the National Children's Justice Act,[770] a movement arose to set up a Court Appointed Special Advocates (CASA) program where

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754. *See* Act of Apr. 10, 1985, ch. 486, §§ 4-8, 1985 Miss. Laws 504, 507-11 (codified at MISS. CODE ANN. §§ 43-21-301, -309, -405, -603, -613 (Supp. 1985)).

755. MISS. CODE ANN. § 43-21-613 (Supp. 1985).

756. Act of Apr. 16, 1979, ch. 506, § 13, 1979 Miss. Laws 1046, 1052 (codified at MISS. CODE ANN. § 43-21-125 (Supp. 1979)).

757. *Id.*

758. *Id.*

759. Baker, *supra* note 739.

760. Interview with Judge James W. Smith, Jr., Supreme Court Justice and former Rankin County Youth Court Judge in Jackson, Miss. (June 14, 1993) [hereinafter Smith].

761. Baker, *supra* note 739.

762. Telephone Interview with Michael W. McPhail, Forrest County Youth Court Judge (February 18, 1993).

763. *Id.*

764. *Id.*

765. *Id.*

766. *Id.*

767. Baker, *supra* note 739.

768. DeLee v. Wilkinson County *ex rel.* D.L.D., 606 So. 2d 1125 (Miss. 1992).

769. *Id.*

770. Act of Aug. 27, 1986, Pub. L. No. 99-401, 100 Stat. 903 (codified at 42 U.S.C. §§ 290dd-290ee, 5101, 5101 notes, 5103, 5105, 10601, 10603, 10603a).

lay people are trained to serve as *guardians ad litem* for children.[771] So the momentum in favor of children is beginning to build again.[772]

In regard to counselors for the youth court, the Judiciary Commission found in 1969:

> Most youth courts do not have youth counselors and have to rely on background reports from the already overworked welfare department caseworkers. At best, this presents problems because the approach of nonjudicial workers may not suit the needs of a court that has to make adjudications giving the child the civil rights protections to which he is entitled in a court.[773]

From the beginnings of juvenile court in Mississippi, the judge could appoint probation officers.[774] Then with the Youth Court Act of 1946, the youth court judge could appoint one or more persons to serve as a youth counselor and/or authorize the welfare department to provide for one.[775] Except for some provisions setting forth salaries to be paid and methods of generating such funds,[776] the law remained unchanged; but the funding for such positions was so meager that the statute furnished only false hope for such personnel. The same was true of aftercare workers. In 1969, there were only eight youth probation officers with only three outside the Jackson metropolitan area.[777] The statute now provides that the youth court judge "shall appoint . . . sufficient personnel" with the cost paid by the board of supervisors after the board has approved such expenditures "out of any available funds budgeted for the youth court."[778]

These statutes provided, at best, minimal relief since no funding was attached. However, now some counselors are being provided from the executive branch.[779] In 1989, the legislature changed the youth court funding statute to read: "Except for expenses provided by state funds and/or other monies, the board of supervisors, or the municipal governing board where there is a municipal youth court, *shall adequately provide* funds for the operation of the youth court . . . ."[780] This procedure assured more stability in this specialized court.[781]

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771. Baker, *supra* note 739.

772. Baker, *supra* note 739.

773. MISS. JUDICIARY COMM'N, *supra* note 6, at 54.

774. Act of Mar. 28, 1916, ch. 111, 1916 Miss. Laws 149; Act of May 11, 1940, ch. 300, 1940 Miss. Laws 544 (codified at MISS. CODE ANN. § 7200 (1942)) (repealed 1946).

775. Act of Feb. 20, 1946, ch. 207, § 21, 1946 Miss. Laws 173, 182 (codified at MISS. CODE ANN. § 7185-21 (1942)).

776. Act of Apr. 5, 1956, ch. 207, 1956 Miss. Laws 259, *amended by* Act of Aug. 6, 1968, ch. 371, 1968 Miss. Laws 577 (codified at MISS. CODE ANN. § 7185-21.5 (1942 & Supp. 1968); later codified at MISS. CODE ANN. § 43-21-43 (1972)) (repealed 1979).

777. MISS. JUDICIARY COMM'N, *supra* note 6, at 55.

778. MISS. CODE ANN. § 43-21-119 (Supp. 1979).

779. Act of Mar. 31, 1973, ch. 438, 1973 Miss. Laws 533 (codified at MISS. CODE ANN. §§ 43-27-2 to -33 (Supp. 1974)).

780. Act of Mar. 24, 1989, ch. 441, § 2, 1989 Miss. Laws 207, 207 (amending MISS. CODE ANN. § 43-21-123 (Supp. 1991)) (emphasis added).

781. This conclusion comes from comparing "out of any available funds" with "shall adequately provide funds."

In regard to corrections facilities for juveniles, the Mississippi Industrial and Training School was created in 1916 for "the care and training of children who are found to be destitute, abandoned or delinquent"[782] to be governed by a five person board.[783] The institution became Columbia Training School.[784] In 1940, the legislature created the "State Training School for Delinquent Colored Youth" with a five person governing board[785] to be located in Jackson near the teacher training college.[786] In 1942, that law was repealed and a "reformatory for the proper training of delinquent negro youth" was created at the state farm at Oakley in Hinds County.[787]

In 1948, the two boards were combined,[788] but separate appropriations and governance were maintained through 1969.[789] In 1970, by legislation not initiated by the Judiciary Commission, the operation of the Mississippi training schools was reorganized, giving the board authority to employ a director as well as a superintendent for each of the schools.[790] Segregation was eliminated, and assignments were made on relevant issues such as age and type of offense.[791] At that time there were over 650 children in those two schools.[792] Efficiency in operation improved, but there was no community service component that would help with follow-up supervision once these children were released.[793]

Then, in 1973, the Mississippi Department of Youth Services was created not only to operate the training schools, but with a Division of Community Service to furnish personnel statewide.[794] In addition to a director, four regional supervisors, and six volunteer coordinators, the Division has seventy-eight youth court counselors hired by them but assigned to specific youth court judges.[795]

According to workload, the judge will have one or more assigned.[796] There are still some youth court counselors who serve multi-county districts,[797] but it is a far

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782. Act of Mar. 28, 1916, ch. 111, 1916 Miss. Laws 149.

783. *Id.*

784. Act of Mar. 31, 1948, ch. 429, § 1, 1948 Miss. Laws 698, 699 (codified at MISS. CODE ANN. § 6744-01 (1942 recompiled)) (repealed 1973).

785. Act of May 11, 1940, ch. 172, 1940 Miss. Laws 336 (repealed 1948).

786. *Id.*

787. Act of May 20, 1942, ch. 285, 1942 Miss. Laws 384.

788. Act of Mar. 31, 1948, ch. 429, 1948 Miss. Laws 698 (originally codified at MISS. CODE ANN. of 1942 § 6744-01 (Supp. 1948)) (repealed 1948).

789. They became the "Board of Trustees of the Mississippi Training Schools." Act of Mar. 31, 1948, ch. 429, § 3, 1948 Miss. Laws 698, 699 (originally codified at MISS. CODE ANN. of 1942 § 6744-03 (Supp. 1948)) (repealed 1973).

790. Act of Mar. 28, 1970, ch. 391, 1970 Miss. Laws 486 (originally codified at MISS. CODE ANN. of 1942 §§ 6744-01, -03, -05, -06, -09, -21, 6800 (new code §§ 43-27-1 to -9, -21 (Supp. 1970))).

791. Telephone Interview with Pete Crocker, Administrative Assistant to the Director of the Mississippi Department of Youth Services, Jackson, Miss. (June 28, 1988) [hereinafter Crocker].

792. *Id.*

793. *Id.*

794. Act of Mar. 31, 1973, ch. 438, 1973 Miss. Laws 533 (codified at MISS. CODE ANN. §§ 43-27-2 to -33 (Supp. 1974)).

795. Crocker, *supra* note 791.

796. Crocker, *supra* note 791.

797. Crocker, *supra* note 791.

cry from the three counselors available statewide and several on the coast who worked with the Harrison County family court in 1970.[798] Even so, with five counselors assigned to her court, Judge Emily Baker said that her counselors' workloads each were around ninety children, when an average caseload is supposed to be thirty-five.[799] Part of the reason for the increased need for counselors has been precipitated by the decrease of the number of children in the training schools.[800]

Even though the 1970 and 1973 Acts did improve governance, and the 1979 Youth Court Act did remove status offenders such as runaways, incorrigibles, and children doing acts which if done by adults would not be crimes from the training schools' populations, the impetus for *drastic* change and improvement of the training schools came in 1977 when the federal district court decided *Morgan v. Sproat*.[801] In that class action protesting treatment at Oakley Training School, the institution where the older boys are housed, Judge Nixon set forth long and detailed guidelines for its operation dealing with qualifications of teachers, counselors, and staff and identified constitutionally insufficient individualized programs of progress.[802] With improved conditions came increased cost.[803] In 1970, the training schools' combined appropriation was less than one and one half million dollars.[804] In 1987-1988, the appropriation was in excess of ten million dollars.[805] In the years since, the Department of Youth Services has undergone extensive reorganizations but the chronicling of that is beyond the scope of this Article. Suffice it to say that the ideal has yet to be achieved.

Changes have been made for the better, but some think it is too little, too late. Some shelters have been built to house neglected and abused children, but even the placement of those has caused controversy.[806] Judge Baker expressed her disappointment with the system in this manner:

> There are very few group homes for children, and those are privately run. Many of them, like Baptist Children's Village, even with its several campuses, are so far away from their homes that the parents can't visit them, much less be involved in whole family treatment. In regard to mental health there is only one 20 bed ward in a state owned institution and there is a 16 bed drug unit at East Mississippi Hospital

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798. MISS. JUDICIARY COMM'N, *supra* note 6, at 55.

799. Baker, *supra* note 739.

800. According to Pete Crocker the maximum population on any day does not exceed 300. Crocker, *supra* note 791.

801. 432 F. Supp. 1130 (S.D. Miss. 1977).

802. *Id.*

803. Crocker, *supra* note 791.

804. Act of Mar. 18, 1970, ch. 152, 1970 Miss. Laws 159; Act of Mar. 18, 1970, ch. 153, 1970 Miss. Laws 160.

805. Crocker, *supra* note 791.

806. Interview with Jane Purdue, Youth Court Public Defender, Pearl, Miss. (July 25, 1985).

> No neighborhood would consent to having a shelter for these poor children who through no fault of their own had to be removed from their homes. We built it [the shelter] between the county-owned livestock arena and the interstate highway. Once located, it has worked out fine, but finding the site was harder than raising the money to build.

Id.

> allocated to juveniles. There are only 16 therapeutic foster homes across the whole state and two therapeutic group homes run by Catholic Charities under contract with the Department of Mental Health. For the status offenders there is nothing. Children's issues have a very low priority in this state. . . . *We've got to start spending our money up front on the neglected and abused child; and we've got to quit separating these children and labeling them and just treat the child.*[807]

Aside from the very real concern for individual children, including the delinquent as well as the neglected and abused, Justice James Smith also looks to the pragmatic side: "If you ever hope to turn around the adult criminal system, you have got to start with the juvenile system."[808] He cites Rankin, DeSoto, and Lauderdale Counties as examples of excellent youth court systems that also have adult facilities not so crowded as the state per capita average.[809]

G. Jury Selection

During the tenure of the Mississippi Judiciary Commission, federal contests of jury selection in Mississippi were being decided frequently, with others being instigated around the state.[810] For that reason the Commission recommended that a study of the jury selection question be deferred until federal guidelines could be inferred from the mass of cases.[811] At the same time, Senator John G. Corlew proposed a new statute which would create a jury commission to provide for random selection of jurors, taking the task away from the board of supervisors.[812]

In 1974, two significant things happened in regard to reform in jury selection in Mississippi. First, Judge William Keady ruled that even where jury selection officials had done nothing wrong and did not attempt to discriminate affirmatively against blacks, *the effect of their practice* was to systematically exclude blacks from Calhoun County juries in violation of the Equal Protection Clause of the Fourteenth Amendment.[813] Also, the legislature repealed all earlier laws relating to jury selection and adopted a new jury commission statute[814] patterned after the uniform law.[815] The legislature stated its purpose explicitly:

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807. Baker, *supra* note 739 (emphasis added). *But see* Act of Mar. 16, 1993, ch. 388, 1993 Miss. Laws 226 (codified at MISS. CODE ANN. § 43-13-117 (Supp. 1993)) (creating a children's advisory council to administer a pilot program for cases of emotionally disturbed and mentally ill children and youth).

808. Smith, *supra* note 760.

809. Smith, *supra* note 760.

810. *See* Willis v. Carson, 324 F. Supp. 1144 (S.D. Miss. 1971); Ford v. White, 299 F. Supp. 772 (S.D. Miss. 1969); King v. Cook, 298 F. Supp. 584 (N.D. Miss. 1969); Raiford v. Dillon, 297 F. Supp. 1307 (S.D. Miss. 1969); Love v. McGee, 297 F. Supp. 1314 (S.D. Miss. 1968); *see also* Chinn v. State, 248 So. 2d 801 (Miss. 1971).

811. MISS. JUDICIARY COMM'N, *supra* note 6, at 67.

812. John G. Corlew, *Mississippi Jury Selection: A Proposed Statute*, 40 MISS. L.J. 393 (May 1969).

813. Ford v. Hollowell, 385 F. Supp. 1392 (N.D. Miss. 1974).

814. Act of Mar. 20, 1974, ch. 378, 1974 Miss. Laws 443 (codified at MISS. CODE ANN. §§ 13-5-2 to -16, -21, -26 to -38, -41 (Supp. 1974)).

815. Uniform Jury Selection And Service Act, 28 U.S.C. §§ 1861-1878 (1968).

> It is the policy of this state that all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court, and that all qualified citizens have the opportunity in accordance with this chapter to be considered for jury service in this state and an obligation to serve as jurors when summoned for that purpose. A citizen shall not be excluded from jury service in this state on account of race, color, religion, sex, national origin, or economic status.[816]

Since the passage of this act, it has not been as easy to overturn convictions in Mississippi due to the selection of the jury.[817]

III. CONCLUSION

In 1985, when I began research for this Article, I was motivated by the memory of a statement made at the last meeting of the Judiciary Commission in the spring of 1970. Circuit Court Judge Darwin M. Maples said: "Mark my words. In fifteen years you'll see most of these recommendations come to pass."[818] Was Judge Maples a prophet?

In January, 1993, we see that his timing may have been ambitious, but his prediction was not inaccurate. Looking at the period from 1970 to 1992, we see that some judicial reforms have come legislatively just as they were recommended: the district attorneys have become full-time and court officials' travel expenses and health insurance are provided just as those of other state officials are.[819] Judges' salaries have been increased substantially every four or five years[820] so that on the date of their passage they appear generous but later become inadequate. Then the legislature has to play a catch-up game with the next raises. Grand juries can be called back and accused offenders can waive indictment and plead guilty, if represented by counsel.[821] The Commission on Judicial Performance has provided an effective method of discipline and removal of judges without the cumbersome process of impeachment.[822] The supreme court established rules of practice and procedure.[823]

As a result of federal court decisions, major changes were made in youth court procedures, correctional facilities, support personnel, and in justice courts and jury selection. In regard to the judiciary, court administrators are now a part of the supreme court and a handful of trial courts. However, they are without a central state court administrator who could consistently gather statistics and recommend

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816. MISS. CODE ANN. § 15-5-2 (Supp. 1974).

817. Griffin v. State, 494 So. 2d 376 (Miss. 1986); Johnson v. State, 404 So. 2d 553 (Miss. 1981); Herring v. State, 374 So. 2d 784 (Miss. 1979). *But see* Avery v. State, 555 So. 2d 1039 (Miss. 1990); Adams v. State, 537 So. 2d 891 (1989).

818. Though no verbatim transcripts were made of the proceedings, the author and the commissioners specifically remember his prediction. The author has verified her memory by conversations with commission members.

819. *See supra* part II.B.1.

820. *See supra* part II.A.5.

821. *See supra* part II.B.2.

822. *See supra* part II.A.3.

823. *See supra* part II.A.4.

temporary assignment of trial judges. Many attempts have been made to reduce backlogs in the courts, but in regard to the supreme court they proved to be stopgap measures only. In the trial courts, the solution used was the mere addition of judgeships so that the number in 1992 was seventy-nine, as opposed to forty-nine in 1969.[824] Judicial selection to fill unexpired terms made use of a judicial nominating committee until 1992, but judicial elections which generally were just an affirmation of initial gubernatorial appointments have become more identified with partisan politics.[825]

Though no state public defender office was established, fees for court appointed defense counsel were raised and counties were authorized to employ local public defenders as an economy measure. Youth counselors are provided by the new Department of Youth Services rather than by the Adult Probation and Parole Board and the number has increased from eight to eighty-seven in fifteen years. In 1989, the Department of Youth Services was merged with the Department of Human Services, which assumed the responsibility for youth services.[826]

Many reforms have taken place, but most came as a reaction to a crisis created by the federal courts or other circumstances rather than by a systematic long range plan. As one studies the history of legislative reforms in other states and in Congress, one sees similar patterns of crisis intervention rather than smooth transition; but change comes here, as there, usually for the better. Mississippi seems to follow the ancient admonition:

> Be not the first by whom the new is tried
> Nor yet the last to lay the old aside.[827]

In doing so, we have become the national model for (1) operational rules on commissions on judicial performance and (2) youth court laws.

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824. SECRETARY OF STATE, MISSISSIPPI JUDICIARY DIRECTORY & COURT CALENDAR (1992).

825. See as an example supreme court contests: Rueben V. Anderson (black incumbent) over Richard Barrett (white supremacist) in 1986; James L. Robertson, Jr. (Harvard Law graduate incumbent) over W. W. Brown (populist) in 1984; Dan M. Lee (endorsed by Miss. Trial Lawyers) over James Arden Barnett (Republican chancellor) in 1980; Edwin Pittman (former Attorney General) victor over three other candidates, with no political name identity in 1988; Charles R. McRae (tough on crime) over Joel W. Blass (former law professor) in 1990; James L. Roberts, Jr. (former Director of the Miss. Highway Safety Patrol and Desert Storm veteran) over James L. Robertson, Jr. (opponent of capital punishment) in 1992 democratic primary; Fred L. Banks (black Democrat incumbent) over W. O. (Chet) Dillard (white Republican chancery judge and former Director of the Miss. Highway Safety Patrol); and James W. Smith, Jr. (Republican county court judge) over Frank Barber (former Democrat Secretary of the Mississippi Senate) in 1992 general election. See also Chief Justice Harry G. Walker's Address, Miss. State Bar Minutes, 81st Annual Business Sess., at 69-70 (June 7, 1986):

> It has also in the last few years become apparent that we need a commission of some sort to formulate and put into effect some appropriate guidelines for the conduct of judicial elections. In my view, some of the advertising and the claims and the criticism that comes through in these elections over the past years has not been fair and has been misleading to the general public . . . I think that it is needed extremely badly at this time, and we are having more and more elections for judicial offices, and it will be even more necessary in the future that something be done.

826. Act of Apr. 19, 1989, ch. 544, § 99, 1989 Miss. Laws 637, 677 (codified at MISS. CODE ANN. § 43-27-2 (Supp. 1989)).

827. A. POPE, AN ESSAY ON CRITICISM pt. II, l. 135 (1711).

Some areas have never been addressed. Constables are still attached to justice court.[828] No limitations have been placed on the taking of appeals to the supreme court either as to amount in controversy or as to choice of subject matter (by certiorari).

The most sweeping reform has come in justice court: reducing the number of judges; eliminating the fee system and the abuses encouraged thereby; placing the justices on salary; and requiring clerks, courtrooms, and uniform dockets in order to add a degree of professionalism to small claims court. Many other legal reforms have come about which the Judiciary Commission did not address, such as the state's adoption of the Federal Rules of Evidence, Uniform Rules for all trial courts, rules for admission, conduct and discipline of the bar, mandatory continuing legal education and continuing judicial education, and the new Rules of Appellate Procedure.

Since 1985, several exciting and forward-looking programs have been introduced into Mississippi's court system that will have far-reaching effects. Notable are those authorized by orders signed during Justice Harry G. Walker's brief term as chief justice.[829] One is a pilot mediation program in divorce and custody cases in chancery court in Lauderdale County. By diverting these cases from the adversarial arena and providing a counselor (mediator) attached to the court, parties are guided to reach an agreement that they have designed.[830] Experience shows that parties are more likely to abide by a mediated agreement and desire fewer modifications in the future. Thereby judge time is saved and the parties are better satisfied.[831] Earlier the supreme court had established a tracking system to give notice to the supreme court whenever an appeal is taken and to limit extensions for court

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828. The Constable Reform Act of 1986, 1986 Miss. Laws 441 (codified at MISS. CODE ANN. §§ 19-19-1, 19-19-5, 25-7-27 (Supp. 1986)), was passed in 1986 which required constables to wear uniforms, to have marked cars with blue lights, and to conclude the state's law enforcement training program within a year of taking office or lose their right to be paid; but still there is a call for more reforms. *See* 1987 MISSISSIPPI COMMISSION FOR JUDICIAL PERFORMANCE, ANNUAL REPORT 22:

> The Commission receives numerous complaints and inquiries regarding constables. The Commission has found there is no administrative control over constables, short of contempt. The judge has little authority over the constable's performance of his duties. It is recommended that in future legislation dealing with the office of constable some administrative authority over the constables be vested in the justice court. While legislation enacted in the 1987 Legislature now requires law enforcement training for constables, there is still no training regarding their civil responsibilities. It is recommended that constables be required to have from four to eight hours of training in this area, with emphasis on service of civil process. It is further recommended that the justice court be given specific authority to redistribute process if the constable(s) fail to serve same in a timely fashion, including authority to hire civil process servers. It is suggested that this include authority, upon repeated failure to serve, to require the constable to show cause to the justice court why he should not lose his process privileges, and have all civil process directed elsewhere.

829. *State Supreme Court Chief Justice to Retire Oct. 1*, CLARION-LEDGER (Jackson, Miss.), Aug. 13, 1987, at A1, A14. Administrative Order in Regard to the Use of Court Mediators in Domestic Relations Cases, 494-98 So. 2d (Miss. Cases) XXXII (Dec. 1, 1986); Administrative Order in Regard to the Use of Court Mediators in Domestic Relations Actions, As Amended, 503-07 So. 2d (Miss. Cases) XCVIII (Feb. 17, 1987).

830. Rankin County Chancery Court has begun a mediation program as well.

831. Judge George D. Warner, Jr., Chancery Judge, Lecture to Judicial Administration class at Mississippi College School of Law, Jackson, Miss. (Nov. 10, 1987).

reporters to only one by the trial judge. Any others must be upon petition to the Supreme Court Clerk.[832]

Perhaps the most revolutionary of these programs is the systematizing and computerization of court information to be retrieved and input on a daily basis so that the "logjams" of delay can be identified and eliminated from the very entry of a litigant into the justice system. The system went on line with the supreme court in September 1988. When the system is available statewide, it, like the New Mexico system after which it is patterned, will allow for electronic filing of briefs and other documents straight from the attorney's office to the supreme court clerk's office.[833]

In October 1987, Presiding Justice Roy Noble Lee ascended to the office of chief justice. Quiet, yet dramatic strides have been made in administration under his leadership. Fiscal management for all judicial operations, disposition of cases at an all time high, docket control from filing of notice of appeal to written opinions, and computerization of the supreme court operation with a trial court pilot project in Harrison County are just some of the changes seen under his leadership.[834]

These changes, as other reforms, have come to Mississippi because one lawyer or judge, or a small group of them, perceived a need and dared to dream of an innovative way to address it. In regard to the changes made in the late 1970s, Arlen Coyle expressed it this way:

> The time was ripe for reform, in spite of the legislature. There were a number of good energetic, intelligent judges and lawyers willing to work on the problems that faced the operation of the court in regard to rules and procedures.[835]

It seems those winds of change are blowing again, though not yet at hurricane force. The program of the 1992 midyear meeting of the Mississippi State Bar entitled "Crisis in Mississippi Courts" dealt specifically with judicial elections, funding, public defenders, unified court system, judicial redistricting, and intermediate appellate courts.[836] In 1990, State Bar President Len Blackwell appointed a Commission of Courts on the Twenty-first century. Hubbard T. Saunders, IV was its first chairman.[837] At the 1992 program, Allan Alexander (1991 chairman of subcommittee on Trial Courts) presented recommendations for structural reform including creation of a group like the now defunct Judicial Council (but without the stigma of the name), co-terminus districts for chancery and circuit courts with one clerk of court per county (with no noncourt functions),

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832. Uniform Procedure to Govern Certain Appeal Procedures to the Supreme Court and Adoption of Tracking System for All Civil and Criminal Cases, 494-98 So. 2d (Miss. Cases) XXXIV (Dec. 17, 1986).

833. Demonstration at Proceedings of the Mississippi State Bar Convention, Hilton Hotel, Biloxi, Miss. (June 3, 1988).

834. MISS. SUPREME COURT, ANNUAL REPORT 27-41 (1991).

835. Coyle, *supra* note 290.

836. THE MISS. LAW., Apr.-May 1992.

837. *Id.*

central records and information systems, calendar management, and alternative dispute resolution to name a few.[838] Judge Timothy E. Ervin, a chancellor from Aberdeen, spoke on the desperate need for support personnel for trial judges.[839] Chief Justice Roy Noble Lee, in addressing the joint session of the legislature in 1992, said:

> Real court reform is on our threshold and could come if we persevere, as early as 1993. As Chief Justice, I pledge to take the first step in this effort. I will submit to the Legislature for consideration in 1993 a plan for creation of an intermediate appellate court.[840]

The bench, the bar, and the public must move from denial or ignoring of problems into not only identification, but also resolution of the problems before the "justice machine" grinds to a halt.

IV. EPILOGUE

Chief Justice Lee proved to be the prophet in both time and substance. The 1993 Legislature passed all four of the state bar's proposals. Senate Bill 2620[841] created the permanent office of central state court administrator and the Mississippi Judicial Advisory Study Committee (which will stand repealed after three years like the ill-fated Judicial Council, but at least the name is less offensive to the legislature).

House Bill 548[842] established a court of appeals under the supreme court. Although it was passed as a five person court rather than ten as first introduced, it is hoped that it will be able to greatly reduce the workload of the supreme court. The judges will be elected in each congressional district in November 1994, to serve for staggered terms of eight years like the justices of the supreme court.[843] That court will have cases assigned to it by the supreme court on any subjects other than death penalty, utility rate, annexation, bond issues, election contests, or unconstitutionality of a statute.[844] Appeals from the court of appeals will be allowed to the supreme court only by writ of certiorari.[845] Prior to final decision of the court of appeals, the supreme court may transfer any case for its own consideration.[846]

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838. S. Allan Alexander, *What Does the Future Hold for the Judicial System in Mississippi?*, THE MISS. LAW., Apr.-May 1992, at 13-15.

839. Timothy E. Ervin, *Administrative Support—Law Clerks and Secretaries for Trial Judges*, THE MISS. LAW., Apr.-May 1992, at 32.

840. Roy Noble Lee, *State of the Judiciary Address*, THE MISS. LAW., Apr.-May 1992, at 10, 12.

841. Act of Apr. 15, 1993, ch. 610, 1993 Miss. Laws 1119 (codified at MISS. CODE ANN. §§ 9-21-1 to -41 (Supp. 1993)).

842. Act of Apr. 20, 1993, ch. 518, 1993 Miss. Laws 654 (codified at MISS. CODE ANN. §§ 9-4-1 to -17 (Supp. 1993)).

843. Act of Apr. 20, 1993, ch. 518, 1993 Miss. Laws 654 (codified at MISS. CODE ANN. § 9-4-5(2) (Supp. 1993)).

844. Act of Apr. 20, 1993, ch. 518, 1993 Miss. Laws 654 (codified at MISS. CODE ANN. § 9-4-3(1) (Supp. 1993)).

845. Act of Apr. 20, 1993, ch. 518, 1993 Miss. Laws 654 (codified at MISS. CODE ANN. § 9-4-3(2) (Supp. 1993)).

846. *Id.*

After January 1, 1996 (one year after the work of the court of appeals has begun), every case within the original jurisdiction of the supreme court will be decided within 270 days and those on certiorari, 180 days.[847] The court of appeals will also be limited to 270 days in which to decide a case after final briefs have been filed.[848] Also in this bill is a provision for the hiring of law clerks, secretaries, and other support personnel for trial judges.[849]

The last of the recommendations by the bar to the 1993 legislature was for salary increases for judges. Two bills purported to accomplish that. House Bill 54,[850] which was signed by the Governor on April 15, 1993, granted certain pay raises for judges. Of particular note in that bill is the cap of $75,600 that it places on the net income of a chancery or circuit clerk.[851] It provides that any fees in excess of that amount will be paid into the county general fund.[852] Since the 1960s there have been proposals from the Mississippi Economic Council and others to remove the clerks from the fee system[853] and put them on salaries like the sheriffs, tax collectors, and now justice court judges, who also were once on the fee system. Those attempts were strongly opposed by the clerks' association. The limitation of this bill, to allow them to net no more than the governor's salary, is an initial step in that direction.

House Bill 548[854] establishing the court of appeals contained within it amendments to the same judicial compensation sections as House Bill 54.[855] It was signed by the Governor on April 20, making it the applicable law for 1993. In Section 32, salaries are set out as follows:

Judge	7-1-93	7-1-94
Supreme Ct, Ch. Justice	88,400	93,400
Presiding Justice	86,400	91,400
Associate Justice	85,800	90,800
Chan. & Circuit Judge	76,200	81,200
Court of Appeals		(1-1-95)
Chief Judge		86,800
Associate Judge		84,000

(The Chief Justice sustained a fifty dollar a month decrease with the approval of

847. Act of Apr. 20, 1993, ch. 518, 1993 Miss. Laws 654 (codified at MISS. CODE ANN. § 9-4-3(5) (Supp. 1993)).

848. Act of Apr. 20, 1993, ch. 518, 1993 Miss. Laws 654 (codified at MISS. CODE ANN. § 9-4-3(4) (Supp. 1993)).

849. Act of Apr. 20, 1993, ch. 518, 1993 Miss. Laws 654 (codified at MISS. CODE ANN. § 9-4-7(2) (Supp. 1993)).

850. Act of Apr. 15, 1993, ch. 481, 1993 Miss. Laws 535.

851. *Id.*

852. *Id.*

853. *Id.* This author, as a consultant to the Mississippi Economic Council, drafted such legislation as early as 1967.

854. Act of Apr. 20, 1993, ch. 518, 1993 Miss. Laws 654.

855. *Id.*

the court of appeals bill, but it was a small price to pay for the assistance he can anticipate receiving in his workload.)

Many people worked very hard to see the 1993 program come to fruition, but the leadership furnished the bar by its 1992-93 President, Grady F. Tollison, Jr., and others was truly outstanding.[856] There are still problems facing the bar and the courts, some of them addressed in this Article, but Justice Vanderbilt was right. Perhaps the bench and bar have gotten that second wind.[857]

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856. Amy Whitten, Allan Alexander, and Robert B. Oswalt were honored at the 1993 Mississippi Bar Convention Luncheon in Biloxi, Mississippi for outstanding service through the Courts in the 21st Century Committee, July 24, 1993.

857. See *Synopsis of the Work of the Commission on the Courts in the 21st Century*, THE MISS. LAW., June-July 1993, at 9, for "the rest of the story." *See also A Report of the Mississippi Bar's Commission on Courts in the 21st Century*, 14 MISS. C. L. REV. 511 (1994).

Subsequent to the completion of this Article, the 1994 Mississippi Legislature adopted House Bill No. 1809 which essentially did three things: (1) increased the number of trial judges and districts to provide for more minority involvement in the trial court judiciary; (2) doubled the size of the court of appeals; and (3) required nonpartisan elections for all judges. On November 22, 1994, the author of this Article, Professor Mary Libby Payne, was elected to the Mississippi Court of Appeals to be one of ten charter members of that court.